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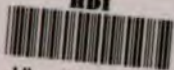
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Commonwealth of Australia Constitution Bill.

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PREFACE.

THE object of this Reprint is to furnish a companion volume to the Debates of the Australian Federal Convention at Adelaide, Sydney, and Melbourne, and complete the history which they present of the shaping of the Australian Federal Constitution.

It contains, besides the official record of the debates in the House of Commons and the House of Lords, the various memoranda which passed between the Australian delegates and Her Majesty's Government prior to the introduction of the Bill, to show the origin of the changes made in the draft received from Australia which were embodied in the Bill as introduced.

The official correspondence as to the modification made to enable Western Australia to enter the Commonwealth as an original State has also been included, and the papers showing the result of the reconsideration of the question by the Parliament of that Colony, and of the subsequent Referendum.

The extent to which the Bill as presented to the House of Commons differed from the draft prepared by the Convention and the Premiers' Conference at Melbourne, is shown by printing it with the clauses in which modifications were made, followed by the corresponding clauses in the draft, printed in italics.

The origin and object of the various amendments proposed and made during the passage of the Bill through the House of Commons are disclosed by the debates.

To complete the record, the Act has been included, and the Proclamation issued by Her Majesty in Council fixing the 1st day of January, 1901, as the date upon which the Colonies are to be united in the new Commonwealth.

December, 1900.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

HOUSE OF COMMONS.

Monday, 14th May, 1900.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

[INTRODUCTION.]

THE SECRETARY OF STATE FOR THE COLONIES (Mr. J. CHAMBERLAIN, Birmingham, W.): I have no doubt there are many Members of the House who will be inclined to envy me the privilege that has fallen to my lot in introducing this Bill for the federation of some of our greatest colonies—a Bill which marks an era in the history of Australia, and is a great and important step towards the organisation of the British Empire. This Bill, which is the result of the careful and prolonged labours of the ablest statesmen in Australia, enables that great island continent to enter at once the widening circle of English-speaking nations. No longer will she be a congeries of States, each of them separate from and entirely independent of the others, a position which anyone will see might possibly in the future, through the natural consequences of competition,

become a source of danger and lead, at any rate, to friction and to weakness. But, if this Bill passes, in future Australia will be, in the words of the preamble of the Bill which I am about to introduce, “an indissoluble federal Commonwealth firmly united for many of the most important functions of government.” After it has been passed there will be for Australia under one Administration a uniform postal and telegraphic service, and provision is made making it possible hereafter for railway communication to be under similar control. In the meantime everything which has to do with the exterior relations of the six colonies concerned will be a matter for the Commonwealth, and not for the individual Governments; a common tariff will be established for all the colonies; there will be at the same time inter-colonial free trade, and what is perhaps more important than all, in future there will be a common form and a common control of national defences. Now, this is a consummation long expected and earnestly hoped for by the people of this country. We believe that it is in the interest of Australia, and that has always been with us the first consideration. But we recognise that it is

also in our interest as well ; we believe the relations between ourselves and these colonies will be simplified, will be more frequent and unrestricted, and, if it be possible, though I hardly think it is, will be more cordial when we have to deal with a single central authority instead of having severally to consult six independent Governments. Whatever is good for Australia is good for the whole British Empire. Therefore, we all of us—independently altogether of party, whether at home or in any other portion of the Empire—rejoice at this proposal, welcome the new birth of which we are witnesses, and anticipate for these great free and progressive communities a future even more prosperous than their past, and an honourable and important position in the history of the Anglo-Saxon race. I hope the House will not think I am taking up its time unnecessarily if, in a few brief words, I give some account of the history of this great movement. The House is aware that the first colonisation of Australia took place in New South Wales in 1788, and that for nearly a generation after that time, as other settlements were made at vast distances along the coast, they all came in some measure under the control of what I may call the central Administration which existed at Sydney. But it will be readily seen that, as these settlements gradually became more populous and of greater importance, the difficulty of such a system of central administration became almost intolerable ; and accordingly in 1825 what was then known as Van Diemen's Land became a separate colony under the name of Tasmania, and the example of Tasmania was followed in succession by Western Australia, South Australia, Victoria, and lastly by Queensland in 1859. Victoria, which was then known as the Port Philip Settlement, was separated from New South Wales by Act of Parliament in 1850, but in 1847, when giving assent to this proposal, Earl Grey, to whom we all must feel we owe most of the principles by which our colonial policy is guided, laid down the views then entertained by him and Her Majesty's Government of the time in reference to the ultimate necessity for some central authority in Australia. He said—

“It is necessary while providing for local management of local interests we should not omit to provide for the central management of all interests not local. Questions having a

bearing on the interests of the Empire may be left appropriately to the Imperial Parliament ; but there are questions which though local to Australia collectively are not merely local in relation to one colony, though each may have part in a common interest, and in regard to which it may be essential to the welfare of all to have a single authority, and they may more appropriately and effectually be decided by a single authority in Australia than by the more remote, less accessible, and, in truth, less competent authority of Parliament.”

It will be seen that Earl Grey foresaw that in the future, at any rate, this necessity would arise. He was a little before his time, for when, in 1850, he introduced proposals for constituting such central authority, his proposals met with no general support, and the Bill, when it became an Act, was confined to the establishment of the colony of Victoria, separating it from the older colony of New South Wales. But from this time, and continuously down to the present day, the subject of some closer union between the separate Australian provinces or States has attracted the attention of all far-seeing and patriotic statesmen, especially in Australia. And among those who laboured in this movement I think it would be ungrateful not to mention the name of Sir Henry Parkes. Sir Henry Parkes was certainly a most remarkable individuality ; he had his peculiarities, as most of us have, but no one would deny that he was a man of great capacity, of great power of work, of great resource, and of intense local patriotism ; and I think that to-day, when the consummation of the work for which he laboured so long is clearly within sight, we may well bear his memory in respectful regard. In 1867 the Dominion of Canada was established. This gave to Sir Henry Parkes an opportunity which he was not slow to seize, and, although he had raised the question before, he now again emphatically urged his fellow-Australians to follow the example of the Dominion of Canada. Still, however, no progress was made. A little later the somewhat sinister activity of certain foreign Powers in the Pacific brought the matter home in a clearer degree to the majority of the Australian people ; and in 1883, accordingly, a conference was called, again at the instance of Sir Henry Parkes, of all the colonies, which resulted in certain recommendations, in the adoption of certain general principles, which led almost immediately to the establishment of what is known as the Federal Council. The

Federal Council, however, although very wisely designed as an experimental step at a time when there was still much to be done before the colonies themselves could see the necessity of a closer union—the Federal Council was not a very effective instrument; it had restricted legislative power, no executive power, it was neither more nor less than an advisory council, and under the circumstances it did not excite any warm popularity in Australia. The great colony of New South Wales refused from the first to attend its deliberations; South Australia subsequently withdrew from them; and now, having served its turn, this Federal Council will be abolished by the Bill which I am about to introduce. Then, again, after the establishment of the Federal Council, and coming down to 1890, a good deal of uneasiness, the result, I think, largely of what was known as the Russian scare, was felt in Australia as to the state of Australian defences, and accordingly another conference was then held in Melbourne. It was followed by a convention in Sydney in 1891, when the first great advance towards a federal union was at last made, because the convention of Sydney in 1891 produced a draft of a Commonwealth Bill which has been the foundation for all subsequent discussion. Those who are acquainted with this draft, which has, of course, very many points of resemblance with the present measure, will, I am sure, recognise the great constructive skill with which it was framed; and they may be interested to know that its great qualities are largely, if not chiefly, due to the labour given to it by Sir Samuel Griffith, the present Chief Justice of Queensland, and by Mr. Barton, who was then Attorney General in Sir George Dibbs' Government, and who is now the distinguished representative of New South Wales among the delegates who have recently been our guests. Well, this draft was then submitted to the local Parliaments, but still, although quiet progress had been made, there was not sufficient popular force behind the movement to secure the Bill being brought into operation; and it was evident to those who were interested in the movement, and particularly I think to my hon. friend Mr. Barton, that the next step must be to educate the people of Australia themselves to the necessity and the importance of this movement. Accordingly, I believe it is to him that we owe the formation of

what is known as the Federal League, which went up and down the country throughout Australia informing the people of the nature of their proposal, explaining the draft, and urging the desirability of its adoption. And so successful was this educational movement that in 1895 the Premiers, meeting again, agreed to bring forward enabling Bills in their several Parliaments for providing a convention of delegates which should be instructed and empowered to frame a constitution. This constitution was then to be submitted to the separate Parliaments sitting in Grand Committee—in Committee of the whole House—and the amendments which might be made in the several Parliaments were then to be referred back to another meeting of the convention and considered by them, and a final draft after such consideration was then to be submitted to the people of the several States in the shape of a general referendum. The convention, accordingly, was held at Adelaide in March, 1897; and certainly, I think, anyone who reads the history of the debates which took place then will agree with me that it would have been absolutely impossible to have collected together more capable, more able, more efficient representatives of Australian feeling than met in that convention. I say that, but I must make one exception. Owing to circumstances on which I need not dwell, the Government of Queensland refused to pass an enabling Bill, and consequently at this convention Queensland was not represented, but the other colonies were all present. The convention went to work in that businesslike spirit which we flatter ourselves distinguishes British proceedings throughout the world. In the first instance they considered and passed resolutions settling the principle upon which they would proceed; then these resolutions were divided amongst a number of committees, and considered by them, and the result was afterwards discussed and finally settled in the whole convention. The draft so prepared went to the different Parliaments, and was returned by them to the Sydney convention in 1897 with their amendments. That convention adjourned to Melbourne in 1898, and the final draft—as it was submitted to Her Majesty's Government the other day by the Parliaments of the five colonies who may be described as the federating colonies—the draft as then

submitted was finally passed by the convention. It had still to go through the ordeal of a referendum. The first referendum showed 219,000 votes for and 108,000 against the Bill. Unfortunately, or as it may be considered fortunately, the New South Wales majority, although there was a majority in favour of the Bill, did not reach the amount of 80,000 votes which had been fixed as the minimum to justify the adoption of the measure. Accordingly on that occasion the Bill was not passed by that colony. New South Wales then took the opportunity of proposing further amendments. These amendments were considered in a friendly spirit by another meeting of the Premiers, and they were to some extent adopted, the proceedings being, perhaps, rather in the nature of a compromise. But still I think in substance the wishes of New South Wales were complied with, and arrangements were then made for a second referendum. On this occasion the referendum took place in the five colonies—I should have said that previous to the first referendum taking place there were only four colonies, Queensland and Western Australia being excluded—but in the second and last referendum Queensland took part for the first time, and the results were 377,600 votes for the Bill and 141,500 against. Western Australia did not join in this decision, but pressed for certain further amendments, which, however, the Premiers decided it was too late for them to consider. And so the Bill is presented to us. It comes with the authority behind it of five federating colonies, and it is this Bill, with a few alterations, but substantially this Bill, with 128 clauses, and dealing with a vast number, probably with hundreds, or even thousands, of separate propositions of the greatest importance, which I have to ask leave to introduce. I think it will be admitted that this Bill is a Bill worthy of all the care and the labour which has been bestowed upon it. I think I may describe it as, and it certainly is, a monument of legislative competency. Of course, the framers of the Bill themselves are perfectly ready to admit that it may not be perfect, that amendments may ultimately be required in it, and that experience may show that something has been omitted, or that something has been placed within its four corners which might with advantage have been left out. But

provision has been made for any such amendment in the Bill itself; and, considering the magnitude and the variety of the interests that we are to deal with, the intricacy and the importance of the subjects with which the Bill has to deal, I think that no praise can be too high for those whose moderation, patience, skill, mutual consideration, and patriotism have been able to produce so great a result. It would be absolutely impossible for me, within anything like a reasonable time, to refer to the multifarious details of this great measure, nor do I think it necessary to do so, because I cannot conceive that the House will be inclined to discuss these details in any critical spirit; but I might be allowed, and it would interest the House, I think, if I call attention to the general scope of the measure and to some of its most striking features. I think it is true to say that, on the whole, this new Constitution, although it is in important respects unlike every other constitution at present existing, still in the main, and more than any other, follows the Constitution of the United States of America. But it would be, perhaps, more interesting to us to contrast it with the Constitution of our own colony of Canada. The differences between the Constitution of the Dominion and the Constitution of the new Commonwealth are, I think, to be explained in a certain fundamental diversity in the position of the two colonies, and also in the methods by which the Constitution has been brought into existence. In the case of Canada, the delegates came here and the Constitution was settled here in conference with Her Majesty's Government, and was the result, to some extent at any rate, of their advice and suggestion. In the case of Australia, the people of Australia, through their representatives, have worked alone, without either inviting or desiring any assistance from outside. In Australia, it must also be remembered, these separate States have enjoyed for a much longer period than had the provinces of Canada complete independent self-governing existence, and, accordingly, while in Canada the people had before them at the time that the Constitution was decided upon the warning, I might almost say, afforded by the civil war in America of the danger of exaggerating State rights, and while the special provinces had no desire to put forward those rights in too emphatic a manner, in Australia there

was no such example to fear, and the separate colonies had enjoyed for so long such great powers that they were naturally unwilling to part with them to anything like the same extent. Accordingly, while in Canada the result of the Constitution was substantially to amalgamate the provinces into one Dominion, the Constitution of Australia creates a federation for distinctly definite and limited objects of a number of independent States, and State rights have throughout been jealously preserved. In Canada everything that was not given expressly to the provinces went to the Central Government. In Australia the Central Government has only powers over matters which are expressly stated and defined in the Constitution. In Canada the Senate was a body which represented particular provinces substantially in proportion to their population. In Australia the Senate consists of six members from all the States—that is to say, an equal number, whatever may be the size or the population; and the mode of the election of the Senate is also different from that of Canada, and, I believe, entirely novel. In Canada the Senate was nominated for life on the advice of the Ministers. In the United States, as we all know, the Senate is elected by the Legislatures of the several States. In Australia the Senate is to be elected at the same election as the Lower House, but each State is to vote, not in the separate constituencies into which it is divided for the purposes of the Lower House, but as one constituency—a *scrutin de liste*, in fact, as the French call it—except in the case of Queensland, where there may be divisions. The Upper House is to serve for six years instead of three; but those are the only differences which separate it in composition, qualification, or constitution from the composition of the Lower House. The Lower House is to be elected according to the electoral laws of the several States, but according to population, and a very ingenious device has been resorted to in order to prevent the numbers of the Lower House from ever becoming excessive. It is provided by the Constitution that the Members of the Lower House shall, as far as possible, be exactly double the numbers of the Upper House or Senate. I should add, perhaps, that the Members of both Houses will be paid, and paid the same salary.

There is also an example which I cannot help thinking might be wisely imitated by ourselves. Ministers on taking office do not vacate their seats. Then there is a most ingenious and complicated provision to prevent a possible deadlock between the two Houses; for although they are, as I have said, elected practically by the same constituency, I think it is evident that the differences in the manner of election may sometimes result in a diversity of opinion between the two chambers. In that case—and here, also, I cannot help thinking that hon. Members who are interested in the subject may find many useful suggestions—the course of the operation is this. Measures may be twice rejected by the Senate, as I understand, in two separate sessions of Parliament. After that the Government may dissolve both Houses. Both Houses will be re-elected at the same time. If after that re-election the Senate should again—a third time—reject a measure, then there is to be a joint sitting of both Houses, and a decision is to be taken by a simple majority of both Houses. That applies to the case of ordinary measures, but, if the question between the two Houses is an amendment of the Constitution, then a somewhat different course is followed. The proposed amendment may be twice rejected by the Senate, and if after that the Houses do not come to an agreement, then the amendment will be settled by means of a referendum, and is to be decided by the majority of votes in a majority of the States. Now, to this new Parliament so constituted thirty-nine distinct subjects have been expressly referred. Amongst them are the tariff, post office, and telegraph services, defence, currency, bankruptcy, marriage and divorce, and old-age pensions, and also the following matters—to which I call special attention because they involve interests outside Australia as well as local—first, the fisheries in Australian waters, beyond the territorial limits of Australia; secondly, copyright; thirdly, legislation dealing with the people of any race not being natives of either of the States (I think that has in view legislation in regard to Asiatics); fourthly, “external affairs,” a phrase of great breadth and vagueness, which, unless interpreted and controlled by some other provision, might easily, it will be seen, give rise to serious difficulties; and, fifthly, the relations with the islands

of the Pacific, which also involves, of course, many questions in which foreign nations are concerned. It will be seen that almost all the points to which I have thus called special attention are matters in which the Imperial Government may have to deal with foreign countries. It is important, therefore—I say this in passing, although I shall deal with it more at length—it is important that measures of this kind, which may involve the Imperial Government in the most serious responsibility, should be interpreted by a tribunal in which all parties have confidence. There are also in the Bill some complicated provisions for dealing with the division of the receipts from Customs among the several States, for the imposition of new duties, and the division of old ones. I have mentioned, at all events, the most important and the most interesting matters which are raised by this Bill, and I think it is evident from even this very brief and inadequate *résumé* that there are a great number of propositions in the Bill which, if it were a case of freely discussing a Constitution of our own, would arouse much difference of opinion. If we had been invited to frame a Constitution, or if we had been consulted after the Constitution had been framed, it is quite possible—I do not say it would have been so—it is quite possible we might have had many suggestions to make and some amendments to offer. But that is not the position. The Bill has been prepared without reference to us. It represents substantially and in most of its features the general opinion of the Australian people; and although I differ totally from those who have said that the Australian people do not desire that this great measure, the result of the labour of their representatives, should receive in the Imperial Parliament the fullest consideration and even the fullest discussion; although I deny altogether that the Australian people have ever considered, or shown that they consider, the Imperial Parliament as merely a Court for the registration of their decrees; and although I am convinced that the Australian people will be neither offended nor insulted if we alter here a word or there a word, or even a clause, in this Bill, I think, on the other hand, they do expect that we shall have a reasonable regard to the labours which they have already expended upon this measure, and to the

general feeling of the Australian people, wherever it has been really and conclusively shown, and to those rights of self-government of which they have made so magnificent a use and which we have so freely and gladly conceded. Now, it is therefore on these main principles that the Government have proceeded in dealing with this Bill. On the one hand, we have accepted without demur, and we shall ask the House of Commons to accept, every point in this Bill, every word, every line, every clause, which deals exclusively with the interests of Australia. We may be vain enough to think that we might have made improvements for the advantage of Australia, but we recognise that they are the best judges in their own case, and we are quite content that the views of their representatives should be in these matters accepted as final; and the result of that is that the Bill which I hope to present to the House to-night is, so far as ninety-nine hundredths of it, I think I might almost say 999-thousandths of it is concerned—as regards the vast proportion of the Bill—exactly the same as that which passed the referendum of the Australian people. But the second principle which I ask the House to assent to, and to which we have given application by certain amendments we have made in the Bill, is that wherever the Bill touches the interests of the Empire as a whole, or the interests of Her Majesty's subjects, or of Her Majesty's possessions outside Australia, the Imperial Parliament occupies a position of trust which it is not the desire of the Empire, and which I do not believe for a moment it is the desire of Australia, that we should fulfil in any perfunctory or formal manner. As I say, we have applied these principles in dealing with the Bill. Two colonies—Western Australia and New Zealand—appealed to Her Majesty's Government, and were represented here by special delegates, and asked us to interfere to secure for them certain amendments in the Bill. I may say Her Majesty's Government were inclined to sympathise with the desire of both these colonies. Her Majesty's Government would have been very glad indeed could their wishes have been complied with; but, as we considered that it was an entirely Australian question, as it was a difference of opinion arising between the Australian colonies, in which neither the Empire nor

the mother country were themselves directly concerned, we felt we were not justified in pressing these claims, or in insisting upon securing their adoption as against the majority of the colonies in Australia. Western Australia asked for the right to come in as an original State, on terms slightly different from those provided in the Constitution. The differences arose as to the question of tariffs; and undoubtedly it was admitted by the five federating colonies, that, owing to the peculiar position of Western Australia, she was entitled to some period of interval before she adopted the common tariff of the Commonwealth; and accordingly five years were allowed her for that purpose, subject to the condition that each year one-fifth of any difference that might exist between the tariff of Western Australia and the tariff of the Commonwealth should be reduced. I confess that it seemed to me that a condition of that kind imposed, and I still think it imposes, on the financial system of Western Australia a very considerable strain. I do not envy the position of the Chancellor of the Exchequer who is beforehand tied down by a statutory and Constitutional law to reduce his tariff by one-fifth in every successive year for five years to come. It is perfectly evident that that must interfere to a considerable extent with the production of his annual budget. But, as I have said, having appealed to the Premiers, and having put forward the views of Western Australia, and having received from them the statement that they did not feel justified in assenting to any amendments, we reported the result of our inquiries to Sir John Forrest, the highly-respected Premier of Western Australia; and we ventured—although it was perhaps hardly our business—in the interest, as we believed, of Australia as a whole and even of Western Australia, to press upon him that his Government should now reconsider their position, and that in spite of the arrangements of which they complained they should seek to enter the Federation as an original State. I am very happy to say—as will be seen by the Blue-book which I have laid upon the table—that Sir John Forrest and his Government have assented to our request to take this step. Their Parliament will be shortly called together; and I hope the result will be that the Constitution

will be submitted to the people of Western Australia, and that Her Majesty's Government will be able to proclaim the whole of the six colonies of Australia as taking part in this great scheme. The colony of New Zealand made several requests to us. Two of these were, I think, of minor importance. They were that they should have access to the Supreme Court of the new Federation, and that some arrangement should be made at once for common defence. We considered that there would be no difficulty in dealing with these very important questions as between New Zealand and the Federated Commonwealth after it was formed, and that it was unnecessary to delay the Commonwealth Bill during the discussion of matters which, no doubt, would require a considerable amount of time. The third proposal was that New Zealand should be allowed to enter as an original State at any time within the next seven years—I do not know that the period of seven years was a definite part of the proposition; but, at all events, a considerable period was to be given to them to make their choice. I confess that here also I should have been very glad if the Premiers had seen their way to accept the suggestion. The delegates, however, who were representing the five federating colonies explained, very ably, the difficulties that would arise from such a state of things. They pointed out that great inconvenience might be suffered, especially with regard to the establishment of a tariff, if the federating colonies were under a sort of compulsion to accept another partner at any time during a long period. I felt this decision the more particularly, because I do not hesitate to say that Her Majesty's Government and the people of this country are under special obligations to the Government and people of New Zealand. Of all the colonies, all the possessions of Her Majesty, including Canada and all the colonies of Australia—I am excluding the colonies in South Africa—New Zealand, in proportion to her population, supplied the largest contingent to Her Majesty's forces, and made the greatest sacrifices. I mentioned this matter in the House a few days ago; but I find I under-estimated what New Zealand has done. I am told that, according to population, the New Zealand contingent in South Africa is equivalent to an army sent from this country of 107,000 men. I do think that

is a most extraordinary proof of—what shall I say?—of affection and regard for the mother country; and if this point of difference had been between the mother country and New Zealand I feel quite certain the House would be inclined to make almost any concession that could be asked. But as it was exclusively a matter between New Zealand and the federating colonies, and as the Premiers again put in a *non possumus* and stated that they had no authority to consent at this period to any further amendments, we have had no course open to us but to accept, although we regret, that decision. We could not, I think, fairly press the opinion of a single colony against the unanimous opinion of five. I now come to the points upon which we think amendment to be necessary. Substantially there is only one point of importance, but in order that I may be perfectly accurate I will mention others, as to which, I think, there will probably be very little debate or opposition. In the first place, there was a blank left in the draft Constitution Bill which it was intended we should fill up as soon as it was known whether Western Australia had joined. We have applied for the figures requisite to fill up the blank, and, having received them from the Australian colonies, we shall insert them at their request. Then, there are certain drafting alterations which are desirable, if not absolutely necessary, in consequence of the probability of the admission of Western Australia as an original State. We have submitted these amendments to the delegates, and, so far as I know at present, no objection of any kind is taken to their insertion. Then, in the third place, there is a matter of more importance, though I am happy to say it is one on which there is no division of opinion. We propose to make clear in the Bill the application of the Colonial Laws Validity Act to the Commonwealth. Doubts have been expressed in the course of the discussion whether the Commonwealth is a colony within the meaning of the Act. The Act, as lawyers in the House are no doubt perfectly well aware, provides, among other things, that where a colonial Act is repugnant to an Imperial statute it shall not be wholly void, but shall only be void so far as repugnancy extends. It was intended as an enabling Act to prevent what otherwise might have occurred—the whole of the colonial statute being

rendered void in consequence of its being repugnant on some one point to Imperial legislation. The Act is one of great importance, because it defines the extent to which the paramountcy of Imperial legislation goes. The fact that Imperial legislation is paramount has always been admitted by the colonies, although the use of the constitutional power has, of course, been extremely rare. The kind of cases in which that paramountcy becomes of importance are such cases as those of the Foreign Enlistment Act and the Merchant Shipping Act. In both of these cases I think it will be admitted to be desirable that there should be legislation for the whole Empire and not conflicting legislation in different parts of the Empire. In the memorandum presented by the delegates on 23rd March they argue that this amendment is altogether unnecessary. They say the Commonwealth appears to the delegates to be clearly a colony and the Federal Parliament to be a legislature within the meaning of the Act; and they cannot think that the larger meaning given to the word colony in Clause 6 can be held to take away the protection of the Act of 1885 for any law passed by the Federal Parliament. Now, I think that the House will feel that there is no difference of opinion as to the merits between us and the delegates. The only point is that they think the amendment is a work of supererogation, but we feel that the matter, involving as it does our foreign relations, is of such vast importance that we ought not to leave a shadow of doubt on the question. It is fair to say—and I wish to call the attention of the House to the fact—that in the last memorandum which was presented by the delegates only a day or two ago they raised for the first time a very very important question—namely, whether the Colonial Laws Validity Act as it stands is law properly applicable to a great Commonwealth like the Dominion of Canada and the new Commonwealth of Australia. Her Majesty's Government admit the importance of that question. They admit that it is a very fair point to raise. But, if there is to be any change in regard to the matter, which, as I have said, is of such infinite importance, the greatest care will have to be taken and very considerable delay must necessarily occur. We should have to consult Canada and other colonies before any amendment of that

Act could be adopted. I do not object on behalf of Her Majesty's Government that the matter is not worthy of consideration. All I say is we have to deal with a provisional period. We cannot delay the passing of the Federation Act in order to discuss this matter. We must have a proper understanding before any change is made; but it will be open to the Federation of Australia and the Dominion of Canada, if they see fit, to raise the matter at a subsequent period, and no doubt, in that case, any views they may express will receive the most careful consideration by Her Majesty's Government. Now I come to what I have described as the substantial point of alteration, which of course is the point affecting the question of appeal. This is the only point I think on which there can possibly be any important subject of controversy or difference of opinion between ourselves and the Australian representatives. Sir, I wish at the outset to repudiate in the strongest and clearest terms the possibility that any difference of opinion upon what is a great constitutional point, which has hitherto been discussed by the delegates with ourselves in the most friendly and cordial spirit, can, by any possibility, be a matter of serious conflict between ourselves and the colonies of Australia. I saw with regret a speech made only a few days ago by the right hon. Gentleman the Member for East Fife, at Colchester, and I must say that I think he was a little premature. He certainly prejudged this question without having heard one single word of the case which Her Majesty's Government had to put before the House; and he seemed to be speaking from a brief which was supplied, of course, by a single one of the parties.

MR. ASQUITH (Fifeshire, E.): No, no!

MR. J. CHAMBERLAIN: Well, speaking from information—I do not know that the right hon. Gentleman will take exception to that word—speaking from information that came from one side only. Now that is what I complain of; and I think I ought to persuade the right hon. Gentleman to withdraw his speech on this subject. I regret his allusion in connection with this matter that the revolutionary war in America is a warning to us. Sir, what connection does

the right hon. Gentleman suppose there can be between the two cases? Then, in another part of his speech, he referred to Canada as being exemplar and model. Well, I do not ask for anything more than Canada and South Africa have already most willingly granted.

MR. ASQUITH: As far as my memory goes—I have not got the speech with me—my reference to the revolution was in a totally different connection. It had nothing whatever to do with this question of the appeal.

MR. J. CHAMBERLAIN: I am extremely glad to have elicited that statement from the right hon. Gentleman. The report which I saw, I confess, was a condensed report.

MR. ASQUITH: It was a condensed report.

MR. J. CHAMBERLAIN: I understood him to refer to the revolution in connection with this difference of opinion, which as I say must under no circumstances be exaggerated. It is important, of course, but it must be discussed by all parties, and it will be discussed by Australia as well as by ourselves, in a perfectly friendly spirit. I am going very much further than I have done hitherto. We have got to a point in our relations with our self-governing colonies in which I think we recognise, once for all, that these relations depend entirely on their free will and absolute consent. The links between us and them at the present time are very slender. Almost a touch might snap them. But, slender as they are, and slight as they are, although we wish, although I hope, that they will become stronger, still if they are felt irksome by any one of our great colonies, we shall not attempt to force them to wear them. One of these ancient links is precisely this right of appeal by every subject of Her Majesty to the Queen in Council. The Bill weakens that—there is no doubt about that—and thereby there opens up, as I shall show, a prospect of causes of friction and irritation between the colonies and ourselves which, in my opinion, would be more numerous and more serious than anything that is likely to result if the right of appeal is retained. Well, how shall we deal with this question? I am sure the House will feel that there is no man in the House who is more anxious

to maintain the good feeling between ourselves and our colonies than I am. Ever since I have been in office that has been my chief desire. Sir, in a case of this kind nothing is more easy than to concede; nothing is more difficult than to refuse. At the same time, believing firmly, as the Government do, that what is asked for in this Bill, as it originally came to us, is not only injurious to the best interests of Australia, but that it would lead to complications which might be destructive of good relations and prejudicial to the unity of the Empire, we feel that we are bound to ask the House to reconsider it. Sir, we believe further—and this is an important point—that opinion has not yet been definitely formed on the subject in Australia, and before, therefore, assenting to a change which may have such serious results, we hold it will be our duty to be quite certain that the demand is a demand that has behind it the whole force of Australian opinion. Now, the new clause, Clause 74, as submitted, would allow no appeal in any matter involving the Federal Constitution, or the constitution of a State, unless the “public interests” of some part of Her Majesty’s dominions other than Australia are involved; and it further provides—a matter to which sufficient attention has not been directed—that the Federal Parliament may in the future make laws limiting further the matters on which appeal is to lie. Now, the right hon. Gentleman the Member for East Fife, unless he has been again misrepresented, said that the Bill did not take away any right already existing. He will find that that is a mistake. It does take away the right of appeal from a State where the State Constitution is in question; and that right exists at the present time. And further, as I have pointed out, by a proposal in this solemn instrument expressly to authorise the newly-created Parliament to further limit the right of appeal, it almost makes it impossible for Her Majesty in future, in reference to this subject, to exercise the right of veto which, of course, is inherent in the prerogative.

MR. ASQUITH: Only as regards appeals from the new High Court. The Parliament can limit no other right of appeal.

MR. J. CHAMBERLAIN: Pardon me. Surely an appeal from a State might very

likely come to the High Court, and then no appeal would lie to Her Majesty in Council. I will not argue the legal point with my right hon. friend, but I think it will be found that, inasmuch as any appeal may come from the Supreme Court of a State to the High Court, there will be a very considerable limitation of the right of appeal, because there would be no appeal from the High Court to the Judicial Committee of the Privy Council. I go on to another point to which I wish to call attention. Although this Bill does not in direct terms limit the right of veto, which is a right, although undoubtedly reserved to the Crown, which must, nevertheless, always be exercised with the most scrupulous care and consideration—although it does not take away that right, it would make it almost a stultification on the part of Her Majesty if the Crown were advised to exercise that right in a matter which we had expressly referred and delegated to the new Parliament. Now, these are the proposals. What are the main objections to these proposals? The matter was under discussion in the convention at Adelaide. When the Australian Premiers were here in the Jubilee year in 1897, I had the honour of discussing the subject with them, to which some public reference was made in Papers presented to this House. The conversations were as a rule in the nature of private discussions, but at the request of Mr. Reid, who was, as it were, the Dean of the representatives from Australia—being the Prime Minister of New South Wales, the mother colony—I handed to him a memorandum on the part of Her Majesty’s Government of the amendments on the draft proposal, which we had seen, which we thought were desirable; and I specially called his attention to the probability that the Imperial Parliament would think it its duty to interfere if there were any limitation of the right of appeal. In this memorandum I quoted a passage from a memorandum of the Privy Council, which gave in very succinct terms the main objections to any proposal of the kind. In 1871 it appears a question was raised at the instigation of some of the Australian colonies, and then the Privy Council in their memorandum said—

“The appellate jurisdiction of Her Majesty in Council exists for the benefit of the colonies, and not for that of the mother country; but

it is impossible to overlook the fact that this jurisdiction is part of Her Majesty's prerogative, and which has been exercised for the benefit of the colonies since the date of their settlement. It is still a powerful link between the colonies and the Crown of Great Britain, and secures to every subject throughout the Empire the right to claim redress from the Throne. It provides a remedy in many cases not falling within the jurisdiction of the ordinary courts of justice. It removes causes from the influence of local prepossession; it affords the means of maintaining the uniformity of the law of England and her colonies which derive a great body of their laws from Great Britain, and enables them, if they think fit, to obtain a decision in the last resort, from the highest judicial authority, composed of men of the greatest legal capacity existing in the metropolis."

The Australian colonies in 1871 recognised the validity of these reasons, and the matter was allowed to drop. It was raised again in 1875, by the passing of the Act by which the Dominion of Canada was created; and again the Privy Council pointed out that—

"this power had been exercised for centuries over all the dependencies of the Empire by the Sovereign of the mother country sitting in Council. By this institution, common to all parts of the Empire beyond the seas, all matters whatever requiring a judicial solution may be brought to the cognisance of one Court in which all have a voice. To abolish this controlling power and abandon each colony and dependency to a separate Court of Appeal of its own would obviously destroy one of the most important ties connecting all parts of the Empire in common obedience to the courts of law, and to renounce the last and most essential mode of exercising the authority of the Crown over its possessions abroad."

There are other reasons, besides these which are stated by the Privy Council, which we have now to bear in mind. This Constitution is to be an Imperial Act, and it is, in substance, the delegation of powers to an authority which is created by the Imperial Parliament. Is it reasonable that when questions arise, as they certainly will arise, as to the interpretation of the powers of the clause by which this authority is delegated, the Imperial power which made the delegation shall not be represented upon the Court which is to give a decision? Then, Sir, there is another point. The terms of the clause are such as certainly to introduce confusion where uniformity is most desired. No appeal is to lie except where the "public interests" of a portion of Her Majesty's dominions outside Australia are concerned. The advice which I have received on the subject goes to show that there may be endless litigation as to the precise nature

of the cases in which public interests will arise. I believe there is no legal authoritative definition of what constitutes public interest. I believe it to be extremely difficult to say whether in the case of a number of individuals, subjects of Her Majesty but not, of course, constituting in themselves part of Her Majesty's possessions, whether in that case it would be held that the public interests of Her Majesty's possessions were involved. And if I am rightly informed, therefore, a clause of this kind, instead of lessening litigation, would increase it, and would bring up to the Judicial Committee of the Privy Council for its decision case after case in which it was a question whether or not the public interests of Her Majesty's possessions were or were not involved. But there is something still more serious than that. I am not going to dwell upon it, because it is so exclusively legal that I would rather leave it to my hon. friend the Attorney General to explain later in the discussion. But I am told that under this proposal, as it stands, it is almost certain that in the confusion of appeals there might be conflict of authority between the new High Court and the Judicial Committee of the Privy Council. Can there be anything worse than two co-equal Courts concurrently giving diverse decisions in matters of the greatest importance that may be submitted to them affecting the British Empire? Lastly, there is also the question, to which I have already referred, that the Constitution empowers the new Parliament to deal with maritime jurisdiction, with the Pacific islands, with foreign enlistments, and with external affairs. The responsibility for the action of the Parliament of Australia and its legislation rests with us. We may be brought into a hostile position in regard to any foreign country in consequence of the action of the Colonial Court. Is it reasonable that while we still undertake to co-operate with the colonies in their defence, while the whole strength of the Empire would be brought to bear in order to protect the interests of the colonies—is it reasonable that the question whether or not their Parliament has gone beyond the powers delegated to it, in some matter in which a foreign country—not one of Her Majesty's possessions—is concerned, should be settled without an appeal to the Privy Council? For these and other reasons—but I have stated the principal

ones—Her Majesty's Government, as soon as they obtained the Bill from the Premiers, were desirous of making some amendments. There were several points in regard to which we desired to make changes, but this was the principal one; and we cordially invited the Governments of the federating colonies to send delegates to this country to represent them, to give the necessary explanations, and to assist us with information in the course of the passage of this Bill through the House. We must joyfully acknowledge that the Australian colonies could not have paid us a greater compliment than to send us gentlemen so able and so representative as those who constitute the delegation; and I am delighted to say that, whatever differences may have arisen upon such points as this to which I have been referring, our personal relations, ever since their arrival, have been of the most cordial and friendly description. Now, most unfortunately, as we think, when the delegates arrived in this country we found that they held themselves precluded by their mandate—by the fact that the referendum had been taken on the Bill, and that, as they contended, public opinion had been expressed—from accepting any amendments at all. They argued, and they have argued since, that the result of the referendum upon the question whether this Bill should or should not pass, whether there should be federation or should not, did in fact imply agreement with every line and every word of the Bill. Of course, holding that view, it became impossible that we should come to a full agreement. It is true that in the first instance the delegates used language which filled our minds with hope, because they said that they interpreted their mandate as one to get this Bill passed intact if they could, and, if not, with the slightest amendment possible. But unfortunately they have not been able to tell us that the slight amendments which they had in view included anything so important as the amendment which we have thought it our duty to make. In these circumstances the next step was to ask the Governments of the federating colonies to enlarge the instructions of their delegates, and that was done in a Paper* which has been presented to the House. The reply of the Premiers is also in the possession of the House. It is inter-

preted by the delegates as a confirmation and approval of the attitude which they have taken up. Of course, everyone must be allowed to offer his own opinion upon this matter. I confess that to me it does not seem to go as far as the delegates think. It is not, in effect, so irreconcilable, because while it does undoubtedly indicate the desire of the Premiers that the Bill should pass as it stands, while it does undoubtedly indicate their opinion that they have no authority to accept the amendment, it does not seem to me to imply that if Her Majesty's Government, upon its own responsibility, were to make the particular amendment suggested there would be any strong feeling in Australia, but that the people and Governments of Australia would be prepared in all good feeling to accept the suggestion. We are called upon therefore to make our decision. It has been recognised by none more strongly or more eloquently than by the delegates themselves that the position of the Imperial Parliament is that of trustee for the Empire, and that although the policy of reconstruction may be a different matter, the right of reconstruction undoubtedly rests with us. If, therefore, it were a fact that Australia as a whole was absolutely united on this question, if the clause exactly as it stands had been taken as the irrevocable and final decision of the Governments and the people of Australia, our position would no doubt be a very delicate and very difficult one, because, as I have already pointed out, we recognise fully the unwisdom—I had almost said the impossibility—of pressing views on great self-governing communities to which they are absolutely opposed. However great we might think the mistake that they are making, and however great we might think the injury to the Empire, still we should have to set against that the danger of interfering with those rights which they regard as their undoubted palladium. I do not know to what conclusion we should have come if that had been the position. We should have had to consider not the wishes of Australia alone. We should have had to consider also that, if we accept their view as to right of appeal, our decision will react upon other colonies just as much entitled to consideration as the great colonies of Australia—on Canada, on South Africa, on New Zealand. I read the other day a statement attributed to a distinguished man—to Sir Henry de

* Cd. 153, 1900.

Villiers, Chief Justice of the Cape, and recently appointed member of the Judicial Committee of the Privy Council. Sir Henry de Villiers deprecated any change in the existing right of appeal. He went on to say that if such a change were made it would be impossible, or it would be unlikely, that either South Africa or other parts of the British Empire would rest content without a similar, or some equal, change being made in reference to their position also. What would be the result? The result would be the weakening and, probably, ultimately the destruction of the Court of Appeal for the Empire, and this Court of Appeal, whatever defects it may have possessed, has, at all events, worked well in the past. It has been acknowledged to have been of importance and value to the great colonies, and it has within it the germs of a still greater, a still more important, and a still more beneficent institution. Now I come to what is perhaps the most pleasant portion of my task. Fortunately, Her Majesty's Government are not placed in this difficult position. We have not to choose between what we firmly believe to be the interests of the Empire on the one hand and the united and absolutely convinced opinion of Australia on the other. For my part, I do not understand at all that in assenting to the Bill by a referendum the majority who voted for it intended to preclude the Imperial Parliament from considering the Bill and from making amendments. On the contrary, I have information from some of the Governments that their intention was exactly the reverse, and that they always believed that this great mother of Parliaments, as a proof of its goodwill, would give its best consideration to this important matter, and, if it saw fit, would suggest amendments and changes. It is putting too great a strain on the principle of the referendum to say that a referendum on a Bill like this, which contains such an enormous number of difficult and different propositions, carries with it assent to every one of those propositions. To say anything of the sort would be directly contrary to the argument used by some of the representatives themselves by which the referendum was carried. The people of Australia were told—"It is not so much your duty at the present moment to look to the individual parts of the Bill, to this clause or to that section of a clause to which you may possibly

take exception. You have got to consider this great work as a whole, and if as a whole you agree to it and are willing to accept it, then vote for the referendum." That is the argument, but that is an argument entirely inconsistent with the present view that the referendum carries with it absolute agreement with every line of the Bill. That that is so is proved also by the action of the great colony of Queensland. Queensland accepted the referendum. Queensland, by one of the largest majorities, accepted this Bill. And yet the delegate of Queensland, the Government of Queensland, the Ministers of Queensland, and the people of Queensland are at the present time urging, with all the strength in their power, that Her Majesty's Government shall restore the right of appeal. Queensland, one of the five original federating States; Queensland, represented by one of the Premiers who refused the other day to enlarge the power of the delegate; Queensland, who has sent to us a delegate in common with the other colonies, is entirely opposed to the view taken by four of the delegates, and is strongly in favour of the line which Her Majesty's Government venture to recommend to the House. I go much further. It is not merely a question of Queensland. Since this matter has been discussed here, this particular question of appeal—not the Bill as a whole—has been raised in Australia as well as in this country. It has been raised as a point for separate discussion and decision; and, while I do not want to exaggerate my own case, I can conclusively show to the House that there is no such unanimity among the four colonies of Australia whose delegates are pressing this change as would justify us in sacrificing the interests of the Empire to the views which are formulated in the Bill. The clause was introduced after lengthened discussions in convention after convention, in the course of which different conclusions were arrived at at different times. The final decision was arrived at by comparatively small majorities. I think only thirty-six members were present out of a convention of fifty members. I do not doubt, however, that it represented the view of the convention at that time, but I may point out that Queensland was then absent, and that if the Queensland delegates, ten in number, had been present, the decision of the Confer-

ence would have been reversed. Australasia has seven colonies. Five of them are federating now. One of them is contemplating the possibility of federation. Of those seven colonies the Governments of three are strongly in favour of our view. The proportion of opinion as represented by the public statements of the Governments concerned in Australasia is as three to four. But that is not all. The Premier of Queensland declares that the Government and the people of Queensland are strongly in favour of the alteration. In Western Australia the Ministers are unanimously in favour of the amendment of Clause 74. They are of opinion—

“that by the possession of one Court of Appeal for the whole British race, whose decisions are final and binding on all the Courts of the Empire, there is constituted a bond between all British people which should be maintained inviolate as the keystone of Imperial unity.”

The Government of New Zealand say that—

“in the best interests of the Empire the right of appeal on constitutional grounds is one of the strongest links binding us to the mother country.”

That is sufficient, I think, to show the character of the opinion in three out of the seven colonies. But what about the remainder? What about New South Wales? New South Wales is the mother colony. When the Constitution was submitted to the Legislature of New South Wales both Houses passed resolutions urging amendments to maintain the right of appeal. They were subsequently outvoted in the convention, but their opinion remains, and I think it is also the opinion of the majority of the people. Yesterday I received a telegram in which it is stated that the Prime Minister is reported by the newspapers to have made a speech in which he emphasised his loyalty to federation—at one time, I believe, he was opposed to federation—and declared that at the recent conference of Premiers at Melbourne the Premiers took a constitutional course; that they also intimated that they did not think the alteration suggested by me would jeopardise the Bill; that Her Majesty's Government would probably amend the Bill if only on account of the desirability of making the appeal uniform in all British colonies, without which uniformity the rights of

British subjects would differ in different places; and that they hoped Her Majesty's Government would not amend the Bill in any other clause, as, if any other changes were attempted, it would be a source of great danger to the rest. That, of course, is a condensed report, and I give it for what it is worth, but certainly the implication of that report is that if the changes were confined to the particular change I am advocating there would be no serious objection on the part of New South Wales. Then I come to a remarkable expression of opinion, that of the Chief Justices of the Colonies in Australasia. The seven Chief Justices are unanimously in favour of the maintenance of the right of appeal. In the newspapers this morning I saw a letter from my right hon. friend Mr. Kingston, the delegate from South Australia, in which there were expressions which I very much regret and which I am inclined to hope he himself will regret having rather hastily used. He suggests that the Chief Justices of Australia are moved in the opinion they have given by the hope of being appointed to the new Court of Appeal which may hereafter be created. [Laughter and cheers.] Let me remind my right hon. friend and also those Members of the House who are inclined to cheer that statement that one of the arguments most eloquently pressed on us by the delegates in their memorandum is that the Bench in Australasia is as pure, as high-minded, and has as great judicial capacity as can be found anywhere in the British dominions. We have welcomed that assertion. We agree with that assertion, but then you cannot, at the same time, apply to this self-same Bench the sordid and unworthy motive which has been suggested. I do not believe there is any motive at all, either in the opinion which has been given by the Chief Justices, or in the opinion which has been given on the other side by lawyers who possibly may profit by retaining the appeal at home. In neither case do I believe that either party has been moved in the slightest degree by any feeling other than a desire that the best interests of Australia should be considered. I say it is a most remarkable and a very strong feature in my case that the Chief Justices, who are all men of the highest capacity, who have enjoyed the greatest respect and popularity in Australia, and who are recog-

nised here as most distinguished men, should be unanimously in favour of the alteration. I inquired about newspaper opinion. I knew no other way of getting at popular opinion; and what do I find? I find that the enormous preponderance of newspaper opinion is in favour of the repeal of this clause. Just before I entered this House I received a telegram from Victoria, the other great colony, next in population to New South Wales. This telegram, which is from the officer administering the Government, says—

“The amendment of Section 74 of the Federation Bill is vigorously supported in all the newspapers of Victoria to-day. I have ascertained the opinion of as many trustworthy persons of all classes as possible. I have not met one opposed to your amendment. If the amendment is substantially confined to Section 74 you will be enthusiastically approved throughout all Victoria.”

The Chambers of Commerce of Sydney, Adelaide, and Brisbane have all communicated through the Prime Ministers of these colonies urging the maintenance of the appeal; public bodies like the Melbourne Metropolitan Board of Works, representatives of trade in public meetings, representatives of the Bar, the banks, insurance corporations, and others—representative bodies whose interests are, of course, largely concerned in this matter—all are unanimously in favour of maintaining the appeal, and, to the best of my knowledge and belief, there has not been held one single meeting throughout Australia against the proposal. I do not wish to attach too much importance to what may be one-sided opinion. I do not deny, in fact, I most readily admit, that there is a strong opinion in favour of the Bill which is not represented by any of the quotations I have read to the House, and which has not come to me in the course of these discussions except from the statements of the delegates who are in this country. I admit that there is a strong, and I have no doubt an equally patriotic, opinion; but what I say, and what I think the House will be absolutely convinced of, is that there is no such unanimity as should make us hesitate in a matter of this vast importance, at all events to take time, and for the present, at any rate, retain the right of appeal as it now exists. It is under these circumstances that I have no hesitation in recommending the amendments—very small in point of extent, involving the alteration of only a few words or a few

lines, but no doubt substantial in importance—which will preserve for Australia precisely the same right of appeal as is now enjoyed by Canada, South Africa, and India. I believe that it is called for by the interests of the Empire, and I trust and believe that it will be accepted by the people of Australia as made in a spirit of co-operation and not at all of antagonism, and in full belief in our sincere interest in and approval of the great work which they have carried out.

MR. ASQUITH: Are the amendments set out in the Blue-book?

MR. J. CHAMBERLAIN: No; but I think they are substantially the same. There is only one other point to which I wish to call the attention of the House. In the conferences which Her Majesty's Government held with the delegates from Australia allusion was made to a desire which has long been entertained by Her Majesty's Government to reconsider the constitution of the Supreme Court of the Empire. What the Lord Chancellor, as representing specially the Government in this matter, has had in view has been an amalgamation of the Judicial Committee of the Privy Council with the appeal jurisdiction of the House of Lords. But the House will readily see—the legal Members perhaps more readily than others—that this would be a very great change, involving very difficult and important constitutional questions, about which it would be of the highest importance to consult Canada and the other colonies and dependencies interested. Therefore, in this matter, as in the matter I previously referred to of the application of the Colonial Laws Validity Act, we have to provide for the immediate future without prejudice to what may be done hereafter. I would remind the House that the present position is not satisfactory. When we came into office we found a Bill prepared by my predecessor by which it was proposed to call to the Privy Council one representative of Canada, South Africa, and Australia to assist in the deliberations of the Privy Council. I found that scheme in the pigeon-holes of the Colonial Office. Her Majesty's Government adopted it because, although they thought it was not satisfactory, still it was a tentative step which would give us some experience, and seemed to meet the wish, already ex-

pressed, of the colonies. That was passed in the first session of the present Parliament. The result has been as we expected. It made no proposal for paying these gentlemen. The Australian colonies and the other colonies concerned—I am not quite certain about Canada—did not propose to pay themselves, and that confined the selection, and the gentlemen actually selected were Judges of high distinction, but who were still engaged in judicial functions in the several colonies. The result was that they could not be here permanently to deal with colonial cases in which they were interested. Another subsidiary result was that, when they were here and a colonial case came up, it might be one with which they had already dealt in their judicial capacity in the colonies. Practically, therefore, although some of these Judges—I believe all of them—have taken their seats and have assisted in the deliberations of the Judicial Committee, we have not secured, by means of that Act, such a permanent constitution of the Judicial Committee as would make it certain that on every occasion when a colonial case was involved there was a colonial Judge with full knowledge of local conditions well qualified to advise his colleagues. Therefore, what we propose, pending further consideration which must be given to any greater scheme, is to appoint for seven years a representative from each of these colonies and India, to be members of the Privy Council, who shall also act during that period as Lords of Appeal, and upon whom will be conferred life peerages, so that they may continue to sit in the House of Lords, although they will not act as Judges after the term of their service has expired. It may be that those services will be renewed, and provision may be taken to renew them if thought desirable. The Judges so appointed will be paid the same salaries as the Lords of Appeal are now paid, and payment will be made at the cost of the Imperial Parliament. Sir, that is the proposal which I hope will be submitted to the other House of Parliament in a very few days, and which I hope will be approved by Parliament as a whole. I feel I ought to apologise to the House. I have travelled over a great number of subjects in the course of this long review of an intricate subject. I have now only to ask the House to consent to the introduction of this Bill. I

hope they will be content subsequently to pass it exactly as it has been introduced. I am quite certain that no more important measure of legislation has ever been presented to Parliament, and that nothing throughout the whole course of the Queen's reign will be a more beneficent feature in that long and glorious history.

Motion made, and Question proposed, "That leave be given to introduce a Bill to constitute the Commonwealth of Australia."—(*Mr. Secretary Chamberlain.*)

SIR H. CAMPBELL-BANNERMAN (*Stirling Burghs*): The full explanation of the right hon. Gentleman who has just sat down has justified the alarm with which many of us on this side of the House contemplated the possibility of this Bill being introduced under the ten minutes Rule. It was most desirable that the right hon. Gentleman should have an opportunity of making a full declaration of his policy, and I am sure all who have listened will not only admire, but profit by the extremely clear and full account he has given of the past history of the question, and of the details of the present proposal. But I wish that on this occasion we could adopt the celebrated Rule in one portion, but not the other. I think it would best represent the public desire, and certainly the interests of the House, that the right hon. Gentleman should have, as he has had, an opportunity for this full explanation, but that the speeches which are to follow should be as few and as brief as possible. As far as I am concerned, I have no intention whatever of occupying time with any elaborate analysis of all the proposals which the right hon. Gentleman has made. The right hon. Gentleman said that no doubt many would envy him the opportunity he enjoyed of bringing in this Bill. We all reciprocate that. It is not difficult to interpret the feeling of our countrymen on the introduction of this measure. There has been a deep, almost an affectionate, interest in the efforts which have been made so long by the statesmen and people of Australia to give themselves the form and status of a nation, and it has been with the utmost satisfaction that in the course of this great constitutional movement we have been able to discern a total absence of any shade, tinge, or trace of impatience or reluctance with regard to

the relations between this country and the colonies. That, indeed, was no more than might be expected. The close, and ever closer, intercommunication, and the exchange of domicile constantly going on, the community of interest between them, the mutual pride which we have in each other, all help to strengthen year by year the original tie of blood and kinship. The wise policy which has been pursued of allowing these great, vigorous, young communities what is practically complete independence to administer their affairs has had an admirable result. The freer they have been from interference or patronage on our part, the warmer has been their sentiment towards this country, and I need hardly point out, for it has been prominently before us of late, that they have again and again offered their most precious possession—the lives of their sons—whenever they thought the mother country needed them. Therefore we need not be surprised that among men of all political opinions and parties in this country there is but one common desire—that this great constitutional scheme, designed and well calculated as it is to give strength and prosperity not only to Australia, but to the British Empire, should take effect with as little delay as possible. Up to this I have spoken of satisfaction and a common feeling of joy and common interest. But there is something more. I am afraid there will be widely felt a feeling of deep regret and disappointment that the Government have felt themselves obliged not to accept the proposition in its entirety, though it had received the stamp of the approval of the whole Australian people. If what is proposed was to be done, it surely is not now it should have been done, but two or three years ago. A prudent and careful Minister would have set himself to bring about a harmonious understanding and arrangement upon the points of difference which existed. The right hon. Gentleman spoke of conferences in the Jubilee year, and quoted from a memorandum, but that is not enough. Negotiations went on in Australia, conventions were held, and the proceedings were reported at great length, draft Bills were published, different amendments were published and the arguments by which they were supported or rejected were published, and everyone knew all about it, but the Government did nothing. They reserved action until the people of Australia had committed

themselves by solemn *plébiscite* to the provisions of the Bill, and then they insist on a change, thus—in effect, though I agree not in intention—giving an open rebuff to the Australian people. [“No, no!”] In effect, not in intention, giving an open rebuff—[“No, no!”]—and flouting the representations of the delegates of the people. [“No, no!”] Now, the right hon. Gentleman has endeavoured to make good in his speech that which he has put at considerable length into the Blue-book; he has tried to dispose of the validity, the genuineness of the authority of the opinion expressed by and on the part of the Australian people; and he has thought it right as Colonial Minister—I do not know that it has ever been done before—to go behind the appointed representatives of the people. He invites his Governors to go about picking up gossip, he extorts opinions, even in some cases from unwilling lips, he gives a number of messages from chambers of commerce, from banks, and other institutions. But what is the value of these opinions unless we know what are their opinions upon the general question, and unless we know whether those who give them are opposed to federation altogether, or are chafing under the rejection of their own views? I think many of these opinions quoted to-night are vitiated somewhat by the fact that they miss the real object at issue. We have heard of opinions in favour of retaining the appeal to the Privy Council, but the question at issue is, Are we prepared to interpret this instrument as it is interpreted by the people of Australia? Then the right hon. Gentleman quotes extracts from newspapers. Well, we know how newspaper opinion can be and has been worked, not only in this, but in other instances. We should like to know something more about these newspapers. In one colony the right hon. Gentleman is opposed by a Conservative free trade journal, but supported by the Liberal protectionist journal. The description is confusing, and we should like to be better informed as to the ground on which we stand before we accept in bulk newspaper criticism and opinion. This gathering up of opinions behind the backs of the delegates representing the Australian people is the proceeding of some eager local political partisan, and not such as we are accustomed to see on the part of a calm British Minister dealing

with a great constitutional development on the part of loyal and intelligent colonists. Well, this is not the stage at which such questions can be approximately discussed. We shall have a time—those of us especially who are learned in the law and competent to take part in these debates on the ground of their legal learning—we shall have a time to consider what the right hon. Gentleman has said; but simple people, and I class myself among them, not being in the least learned in the law, will ask why should it be so dangerous to leave the interpretation of the Commonwealth Act to those best acquainted with the circumstances and the state of feeling out of which it has arisen? Surely those who have framed it, who have seen the growth of the whole question, know what was intended when the Act was passed by the Australian people, and are better able to judge of the spirit and intention than persons who, though more learned, have no such acquaintance with local feeling. It is enough for me to say in the meantime that, even if all that legal ingenuity can urge in favour of the step taken by the Government were true, there still would remain the formidable objection that, even if it were a desirable thing to accomplish, and even if there were some little prospective danger to be warded off, it is not worth the consequences that may follow from the step the Government are taking for the sake of what is, after all, a small technical point. In order to overcome a difficulty that might be otherwise met we are to break in upon a solemn instrument, which represents not only the will of the Australian people, but a covenant and contract entered into by the colonies among themselves. We are to break in upon that and throw the whole question of federation back into the field of political agitation. Will it not involve a further appeal to the Australian people? ["No."] I am disposed to form a contrary opinion. We are to deprive our action of the grace attaching to a hearty and confident reception; we sow the seeds of complaint and dissatisfaction little favourable to lasting unity. Therefore, as far as we on this side of the House are concerned, we will not be parties to taking the line the Government and the right hon. Gentleman propose. We will at the proper time support such an Amendment as may in some measure, at all events, modify the great mistake in Imperial

policy which has been disclosed to us to-night.

MR. FABER (York): I must crave the indulgence of the House upon this, my first occasion of addressing it, and I must ask the pardon of the House for venturing to speak in so important a debate. My only excuse is that the subject is not an unfamiliar one to me, inasmuch as I was the Registrar of the Privy Council for nine years, and during that time all appeals from the colonies and from India passed through my hands. As regards the question of the new Constitution for Australia, I think that all that is necessary for me to say is, that I most heartily congratulate Australia on the fact that she is about, at last, to obtain the object of her desire. But the proposed limitation of the appeal to the Privy Council falls altogether into a different category. That is a matter which concerns, not Australia alone, but Australia in relation to this country; and, more than that, concerns our whole Empire. The Privy Council appeal is the right, in the last resort, of every subject of Her Majesty's Dominions beyond the seas to petition the Sovereign for justice; it is the prerogative right of the Sovereign to hear all such matters of complaint, and to grant such redress as the Sovereign may think fit. The Sovereign delegates the hearing to the Judicial Committee of the Privy Council, who report their opinion to the Sovereign: the Sovereign confirms their Report by an Order in Council; until so confirmed the Report has no validity whatever. It has been found necessary, from time to time, to cut down and modify the right of appeal of the subject. Throughout our Empire abroad, speaking generally, the subject has no right of appeal, unless the value of the matter in issue is £500 or over. Otherwise, special leave to appeal must be obtained from the Privy Council before an appeal can be brought. In the case of the Supreme Court of Canada, the subject has no right of appeal to the Privy Council at all. Special leave to appeal must in every case be obtained, and until that is obtained the subject is precluded from any appeal so far as the Privy Council is concerned. But this is the first occasion on which it has been sought to cut down the prerogative right of the Sovereign to admit any appeal whatever, as she may think fit, to her Privy Council. I

think we shall be all agreed, both here and in Australia, that such a course ought not to be taken without cogent reasons being shown for it. What are these reasons? The first reason which has been adduced is that the people of Australia wish it. But are we quite justified in arriving at this conclusion? I know that a Bill of 128 Clauses was submitted to five of the colonies of Australia by a referendum, and that those colonies assented to it by large majorities, but did they do anything more than say "yea" to the great question, "Shall Australia be federated?" Are we justified in assuming from their answer that they approved of the Privy Council clause in the Bill? I venture to doubt whether most of those who answered "yea" knew that there was this Privy Council clause in the Bill at all, or if they did know, whether they were aware of the meaning of it. I do not think the Privy Council question is a "popular" question at all. It is a question for the experts of Australia, and the experts are deeply divided upon it. Legal opinion in Australia, so far as we know, seems to be largely in favour of retaining the Privy Council appeal. In these circumstances, are we justified in making a radical change of this kind, on the ground that it is desired by the Australian people? I do not think that we are. Another point that is taken is that all that Australia desires is the right to interpret her own Constitution; but the latter part of Clause 74 of the Bill goes far beyond this, for it provides that the Parliament of Australia may make laws, further limiting the Royal prerogative; and under such a power, that Parliament may at any time cut away the prerogative altogether, and certainly destroy the Privy Council appeal. It is put forward, in favour of this right to interpret her own Constitution, that the Australian Courts are the best judges in such a matter, and that Australia ought to have such a right, as a matter of self-government. But is it a matter of self-government at all? The colonies of Australia have been governing themselves, in the fullest sense of the word, for years; and yet there has been all the time an appeal to the Privy Council, which has worked perfectly smoothly, and has interfered in no way with self-government, for the reason that the two move altogether on different

planes. Is not the Dominion of Canada self-governing? There there is the free, unrestricted prerogative of the Sovereign to admit any appeal to the Privy Council she may think fit. In 1867 the British North America Act was passed, which incorporated the various provinces of Canada into one Dominion. That Act ascribed certain topics of legislation to the Dominion legislature, and certain topics to the legislatures of the Provinces. Questions constantly arose, between the Dominion and the Provinces, as to whether a particular topic of legislation fell within the powers of the Dominion or of a Province; large questions, in which the people of Canada were deeply interested—questions of education, of liquor-licence, of boundaries, of the rights of the Indians, among many others. These questions came, in the last resort, before the Privy Council, and I think the people of Canada were glad that they did, and were well satisfied with the decisions given. I should confidently appeal to the people of Canada to-day, to say whether or no they would prefer to keep the Privy Council appeal. I feel certain that their answer would be in the affirmative. Moreover, Clause 74 of the Bill, as I understand it, will not work, and is almost sure to lead to friction between the High Court of Australia and the Privy Council. May I take, if I am not wearying the House, just two or three cases? Suppose a case, involving the interpretation of the Constitution, is brought in the Supreme Court of the State of New South Wales, as it may be, and that the judgment of that Court satisfies neither party; suppose that each side appeals, one to the High Court of Australia, the other direct to the Privy Council, and that the two tribunals differ; both will be final in the matter, though they conflict with each other. Which is to govern? Take another similar case involving the interpretation of the Constitution, which might easily arise. An action, on a question arising on the Constitution, is brought in the Supreme Court of the State of New South Wales. An action is brought, altogether independently, in the Supreme Court of the State of Victoria, happening to involve the same point; one case is appealed to the High Court of Australia and the other to the Privy Council. The two Courts take divergent views. Again you will have judicial chaos. Take

another case. Clause 74 provides that there is to be no appeal to the Privy Council from the High Court of Australia in matters involving the interpretation of the Constitution. But who is to decide whether it is a matter involving the Constitution or not? The High Court of Australia may think that it is and may decide the question finally; but the party aggrieved by the decision may present a petition to the Privy Council on the ground that the interpretation of the Constitution of Australia is not involved, and the Privy Council may take that view and grant leave to appeal, and hear the appeal, and the decision of the Privy Council may be different to the decision of the High Court of Australia. In such a case as that you will not only have a difference of opinion, but direct conflict between the two tribunals, the High Court of Australia considering that the Privy Council has assumed jurisdiction that does not belong to it. Exactly the same case may arise in the interpretation of "public interests" of Her Majesty's Dominions outside the Commonwealth referred to by Clause 74. The High Court of Australia may decide that public interests outside the Commonwealth are not concerned, whereas the Privy Council may hold that public interests are concerned. There again you would have a direct conflict between the two tribunals. I would much sooner see the Privy Council appeal done away with altogether, and the High Court of Australia made supreme in all matters, than I would run the risk of the jurisdiction of these two tribunals so overlapping as to be almost certain to come into collision. Then there is a different objection which has been taken to the Privy Council appeal, and I allude to it because the subject has come within my own experience. It has been said that there are long delays in the Privy Council. My memory tells me that, so far as delay is concerned, in bringing a case before the Privy Council, that criticism is scarcely justified by the facts. I know there have been long delays in cases from Australia and elsewhere, but they have generally taken place in the colony from which the appeal has come, and before the record of the proceedings has reached the Privy Council office. It frequently takes a long time to prepare the record in the colony, and that is where the real delay, as a rule, occurs. But when the record

has arrived at the Privy Council office there is no delay in bringing the matter on for hearing, unless the parties themselves delay it. If the criticism means that there is delay in delivering judgment, then I must confess that there have been delays. But I do not think that fault is confined to the Privy Council alone. I think that many of our Courts in this country, and perhaps in the colonies, are equally open to that criticism. I venture to doubt whether judges are sufficiently alive to the serious inconvenience which is caused to suitors by delaying judgment in an appeal for sometimes many months after the hearing. Another objection which has been made to the Privy Council appeal is its expense. I know that all litigation is expensive, and that law is a luxury of the most expensive nature. I do not think, however, that an appeal to the Privy Council is any more expensive than an appeal to the House of Lords, and I venture to doubt whether it is any more expensive than an appeal will be to the High Court of Australia. Another objection taken—and the most serious one of all—is, that the Privy Council is not a strong enough tribunal; that, in the words of one of the Delegates, the Privy Council is not a tribunal that this country would be satisfied with. In answer to the latter part of that criticism I may say that for years past the Privy Council has been a stronger tribunal than the House of Lords, which is the final Court in this country. To-day the Privy Council consists not only of all the Lords who sit judicially in House of Lords cases, but of many members besides, including three distinguished judges from Canada, Australia, and South Africa. The real trouble does not lie there, but it lies in the fact that when the Privy Council and the House of Lords sit at the same time, as they frequently do, it is very difficult to make up two strong Courts, with the result that one is apt to be sacrificed to the other. There is only one remedy for this, and that is, that there ought to be more paid judges. We have relied far too much in the past upon gratuitous assistance, which has been nobly given, and which nobody desires to criticise. But when you have paid judges you have, of course, a right to call for their services, which you have not when they are unpaid. The right hon. Gentleman the Secretary of State for the Colonies, who introduced this Bill, has

foreshadowed the change that is going to be made. I myself hope the Privy Council will not be incorporated in the House of Lords. I am sure such a scheme would not be agreeable to India. The natives of India set great store by the fact that their appeals are made to the Queen Empress. Nor do I think it would be agreeable to the colonies. There are many Parliaments in the British Empire, but there is only one Crown, and I think the colonies, if they had to choose between the two, would prefer a strong Privy Council, which is the Court of the Sovereign, to the House of Lords, which is a Court of our Parliament. In my view the time has now come for the establishment of a new Court altogether, which would be neither the Privy Council nor the House of Lords. What I should like to see established would be a Court entitled "Her Majesty's Supreme Court of the British Empire." Such a Court would satisfy both the colonies and India. Let it consist of eleven paid judges at least:—the Lord Chancellor, six Lords of Appeal from this country, three Lords of Appeal from the colonies, and one from India. Divide the Court into two divisions, and let the two divisions sit at the same time. Let one take the English, Irish, and Scotch appeals, and let the other deal with Colonial and Indian appeals. Let the quorum in each case be five; in a Court of final resort, such as this, I think the parties are entitled to have their cases tried by five judges at least. I know this will cost money, but it is worth it, if it is worth keeping the appeal from the colonies to this country. Running the Empire on the cheap is an expensive process in the end. I say it is worth keeping the appeal to this country. The Privy Council appeal in the past has been the strongest bond of union between this country and the colonies. A Canadian barrister once remarked to me that it was the one link between Canada and this country. I know that the old idea of treating our colonies as encumbrances has passed away for ever. We all look upon them now as a joy and a glory—aye, and in our hour of need a strong help also. Thanks to the Secretary of State for the Colonies, the Premier of Canada, Lord Strathcona, and eminent men in Australia and New Zealand, the fire of patriotism burns in our colonies with a pure clear flame which is the wonder of the world. In South

Africa, men from Canada, New Zealand, and Australia are fighting side by side with men from England, Ireland, and Scotland, under one flag. With the copious outpouring of their blood they are sealing our Empire together. In the words of a great orator—

"Their blood has flowed in the same stream and drenched the same field; when the chill morning dawned their dead lay cold and stark together; in the same deep pit their bodies were deposited; the green corn of spring breaks from their commingled dust; the dew falls from heaven upon their union in the grave."

While they in their lives and their deaths are joining our Empire together, do not let us at home be putting it asunder, as we shall be doing if we strike at the Privy Council appeal. The Privy Council, or some such Appeal Court as I have indicated, is the keystone upon which, if we work wisely, we may build up the great edifice of Imperial Federation.

SIR CHARLES DILKE (Gloucestershire, Forest of Dean): I hope the Attorney General will be able to answer a question with which I wish to begin. He probably has the amendments before him, and I wish to know whether the two main amendments placed before us by the Secretary of State for the Colonies are the only two substantial amendments. My reason for beginning with this question is that on page 19 of the Blue-book a third substantial amendment is foreshadowed, but has not been alluded to by the right hon. Gentleman. It concerns merchant shipping, and I wish to know whether it is to be made or not.

THE ATTORNEY GENERAL (Sir ROBERT FINLAY, Inverness Burghs): The two amendments mentioned by my right hon. friend the Colonial Secretary are the only two amendments of a substantial character.

SIR CHARLES DILKE: And the words as to the Commonwealth Constitution being in force on merchant shipping from Commonwealth port to Commonwealth port are to remain in the Bill.

SIR ROBERT FINLAY: Yes.

SIR CHARLES DILKE: I am glad to hear that. It is a very excellent thing that the grounds of difference should be narrowed down to two, which,

in my opinion, are substantially one, and that this question of merchant shipping is not to be raised on this occasion. The two points which the Secretary of State for the Colonies has placed before us to-night are those which he thinks so important that, while waiving smaller matters, it is necessary that we should enter into a sort of friendly conflict concerning them with the Australian people, who have pronounced in a referendum in favour of this Bill. The first of these points refers to the application of the Colonial Laws Validity Act, and the other refers to the special leave to appeal. No one denies the applicability to all the colonies of the principle of the Colonial Laws Validity Act. The Secretary of State in his introductory speech alluded to it as being thought to be unnecessary by the Australians, and he argued that it was necessary. But how in the world is it possible to attach the importance to this matter which the Government does, to enter into a conflict regarding it, and to render a reopening of the whole constitutional question in Australia necessary, when the Secretary of State for the Colonies himself tells us that all the Colonial Laws Validity Act does is to confirm the already existing law of the Empire which is the law without it, and to preserve portions of Colonial Acts which otherwise would fall to the ground. The Colonial Secretary to-night explained the meaning of the Colonial Laws Validity Act. The effect of this Act was most ably argued by the right hon. Gentleman the Member for West Monmouth in one of his letters, signed "Historicus," in *The Times*. The Colonial Secretary adopts his view, and says that the principle of the Colonial Laws Validity Act is that it is an enabling statute to preserve portions of colonial laws which otherwise would have fallen through by reason of conflict with our laws. Where is the necessity to enter into a conflict as regards the applicability of that Act to Australia? The principle exists, everyone admits it, and no colony can divest itself of it. It is accepted by every Court and by the representatives of every colony, and why, therefore, enter into a conflict regarding it? Is it worth while to run all the risks which an alteration of the Act would imply either with regard to the Colonial Laws Validity Act or to the whole question of appeal, both being in reality closely connected? The Colonial Secretary argued that we must rely upon statute and that we must run the risk of altering the Bill as it stands, because we cannot rely on what he calls the veto. He implied in his speech that the veto in the case of great dominions such as the Commonwealth cannot be applied. That is not the case. I ventured to move to-day for a continuation of the Return issued in 1894 on this very question. It will be seen from that Return that a considerable number of Colonial Acts have either been reserved, which was the old practice, or contained a suspensory clause providing that they should not come into force until they have been scrutinised at home. In some cases controversy arose and the Acts were dropped. My point against these changes is that they are unnecessary. It is not necessary to introduce the Colonial Laws Validity Act, because it is admitted that its principle applies to all the Colonies, and would be enforced by every Court in the Empire, and with regard to any other dangers they are amply guarded against by the power of reservation or by a suspensory clause, or else they concern the Executive Government, and are entirely outside the question of appeal. That is my case against these changes. We should be able to judge the cases likely to arise in Australia, by looking at the cases which have arisen in Canada. These have been cases concerning copyright, merchant shipping, and marriage with a deceased wife's sister. Now, as regards copyright, there has never been any conflict between us and the Australians, and there is not likely to be any conflict. It is a question not likely to arise in Australia, although it has risen frequently in Canada. The case of merchant shipping is one which has arisen in Canada and may arise in Australia, but it is amply provided for by means of the power of reservation or by a suspensory clause, as in the case of Canada. There cannot be absolute uniformity in all our merchant shipping laws. That is gone beyond recovery. We have different codes in India and in New Zealand. In New Zealand especially there are enormous differences, as an advanced principle with regard to merchant shipping has been adopted in her laws, with reference to the Manning Scale, and the provisions with regard to rate of wage, and these have been conceded to New Zealand without any reservation of

the Act. Until you get uniformity of legislation in large groups of colonies, all the dangers you apprehend are amply provided against, either by reservation or a suspensory clause. Remember that under this Constitution there is power given to the Governor-General to send the Bill back to the Parliament of the Commonwealth with suggestions for amendment, and of course in such a case it is certain that such amendments would be a matter for discussion between the Home Government and the Commonwealth Government, or for greater security the Act would of course be reserved. With regard to the question of appeal, I ask why many of the arguments addressed to us to-night should have been addressed to us at all. How do they strengthen the case for the proposed amendment? On page 26 of the Blue-book the House will find two main arguments given in favour of the change. One has been mentioned to-night, namely, foreign enlistment; the other has not been mentioned, namely, the case of merchant shipping, to which I have already alluded. If, however, there is real danger in such a case as foreign enlistment, that danger and other dangers to which I have alluded will not be guarded against by a reservation of the law or by a suspensory clause. It is the danger of action by the Executive Government of the colony—that is the danger we have to deal with, and no power of appeal, nor any of the amendments proposed to this Bill, can affect that danger. We can only trust in such matters to the good sense of the people of the colonies, as we have trusted to it in the past. Two cases of such conflict have arisen. One was when two Australian colonies made a statute forbidding entrance into the colonies of time-expired or pardoned convicts. That statute was disallowed, and the Executive Government proceeded to act on the disallowed Act as if it were actually in force. That was very dangerous action on the part of the Executive Government, and one calculated to make very serious trouble. That is the real danger we have to avoid, and none of the amendments to this Bill cover such a case as that. The other case which occurred had reference to the Fenian informers who were not allowed to land, and was again the action of the Executive Government. It is argued that many of

these dangers may be guarded against by an appeal to the Queen in Council. I confess I cannot see how they can be guarded against in such a way. With reference to danger arising out of the Foreign Enlistment Act I think it would be far better to stop at once the dangerous clauses in any such Act rather than wait until feeling was exasperated and actual danger had arisen in the colonies. These are dangers which can be guarded against at the time, but they are not dangers which when conflict has arisen and when passion is aroused can be got rid of by an appeal to the Queen in Council. The Colonial Secretary to-night told the House that when the Colonial Prime Ministers were here at the time of the Jubilee he handed them an amended Bill showing the changes which he would like to have introduced into the Constitution Bill on the question of appeal. It must be remembered that the undoubted intention of Sir James Abbott, when in March, 1898, he moved amendments which placed Clause 74 in its present form, was to carry out what the Colonial Prime Ministers believed were the Colonial Secretary's wishes as mentioned at the time of the Jubilee. These amendments were made and afterwards revised by the drafting committee with the intention of meeting the views of the Colonial Secretary; but if the amendments which were then introduced did not meet his view, why did not the Colonial Secretary again correspond with the Prime Ministers and those responsible for the drafting of this Constitution and say that the amendments were not sufficient? An immense time passed, step after step was taken in Australia, but no step was taken by the Colonial Secretary from 1897 until two or three months ago. I think we must agree with what was said by the Leader of the Opposition on that point, namely, that it would have been more courteous to the colonies and wiser in the interests of the changes which the right hon. Gentleman wished to obtain if the Colonial Secretary had made some communication between the date of the Jubilee and that of the Bill reaching this country in its present form. The right hon. Gentleman said to-night that the link of the Privy Council appeal was very precious in the interests of the Empire, and though he did not go so far as to use language as strong as that which has fallen from the hon. Member

for York, yet he quoted from a memorandum of the Privy Council itself very strong language indeed with reference to the value of the tie. In the Blue-book the right hon. Gentleman used an argument which he has not placed before the House. On page 28 of the Blue-book he expresses the view that the Bill is a retrograde measure, on account of its provision with regard to appeal, as far as Imperial federation is concerned. I should have been glad to have heard some attempt to justify that statement. I cannot conceive it to be the case. To my mind the whole controversy in which we are now engaged has exactly the opposite effect. If there is one proposal more than another that I have advocated in this House it is that we should prepare in time of peace for what may come upon us in time of war, by co-operation between our colonies and ourselves. I believe joint action of that kind would be formed if we had been able to accept this Bill without amendment, and if there were no actual danger to the Empire in accepting this Bill it would be far better to have taken the Bill as it stands. Instead of saying that the Bill would be a retrograde step as far as Imperial Federation is concerned it would have been better if the right hon. Gentleman had pointed out some positive danger to the Empire in taking the measure as it stands. In that it seems to me the Secretary of State for the Colonies has conspicuously failed to-night. The right hon. Gentleman has told us that it is for external reasons—reasons affecting other nations—that it is necessary to make this change. I confess it seems to me that the right hon. Gentleman has entirely failed to establish any necessity, on what may be called the foreign or external point of view, for making this particular change in the Bill. We have already the weapon of the reservation of the Bill and of non-assent to it, we have also the weapon of the Colonial Laws Validity Act, and I cannot conceive any case being shown where an appeal to the Privy Council would be likely to save us from a foreign danger to which otherwise we would be exposed. The Secretary of State in the latter portion of the Blue-book appeals to the opinion of the colonies, and in his speech to-night he laboured rather hard to try and convince the House that opinion in the colonies was already in a very large minority with him, and was coming round

to his side, if it had not actually become a majority. He quotes three colonies out of seven as agreeing with his view, and he quoted to-night the opinion of Judges and newspapers against the opinion of the delegates who have the highest responsibility in this matter. Surely they represent the feelings of the people of Australia on this question more accurately than even the Australian Parliament or the Prime Ministers, and he has quoted against their opinion that of judges and newspapers.

MR. J. CHAMBERLAIN: Does the right hon. Baronet state that these delegates were elected?

SIR CHARLES DILKE: They were elected to the Convention to represent their colonies in this country.

MR. J. CHAMBERLAIN: They were not elected as delegates, but were, of course, appointed by the responsible Governments, and I am not aware that they claim to have any special mandate on this particular question.

SIR CHARLES DILKE: What I said was that these delegates represent the federal feeling of Australia. They are known as the federal leaders, and two of them led the Federal Convention, and were elected to that convention by a larger number of votes than is usually recorded in Parliamentary elections in Australia. Therefore I say they are perfectly representative of Australian feeling, not of colony by colony, but of the majority of the people of Australia. The right hon. Gentleman quotes the opinion of three colonies—Queensland, Western Australia, and New Zealand. The colony of Queensland was late in coming into the Commonwealth, as he has shown. The four colonies which hung to the Federal movement all along were New South Wales, Victoria, South Australia, and Tasmania. Queensland was not represented in the Convention when the 74th clause was arranged; and it must be remembered that several of those who have spoken in her name were opponents of the Federal Union, and were only driven into it ultimately by the feeling of the electorate of the State. As regards Western Australia, Sir John Forrest, the Premier, to the last moment stood out from the Federal movement, and he has now been

driven into it by the electorate of his State against his own personal opinion. Then my right hon. friend recites New Zealand as the third colony on his side. I can say that New Zealand was not a party to this Bill, and never will be a party to a close federation. Although it had been very willing to come in with Australia as a potential member of the Federal Council, New Zealand cannot, on account of the divergence of her interests and the enormous distance from Australia—it is as far from Australia to New Zealand as from this House to Africa—come into closer federation. That was the three colonies out of seven, while on the other side, in favour of keeping the Bill as it is, you have the opinion of the really Federal colonies which have been in the movement from the first—New South Wales, Victoria, South Australia, and Tasmania. I am very sorry that the Secretary of State should have published in Blue-book, and should have quoted here to-night, the opinion of certain colonial judges in regard to what is the opinion of Australia as a whole. And more than that, that he should have quoted the personal opinion of colonial governors of single colonies as regards the opinion of Australia as a whole. The Blue-book is full of quotations like that, and the right hon. Gentleman quoted the Governor of Queensland.

MR. J. CHAMBERLAIN: No, no! I certainly refrained from quoting the opinion of any English Governor.

SIR CHARLES DILKE: At all events I say that it is a great pity that the right hon. Gentleman should have printed in the Blue-book the personal opinion of Lord Lamington, because it is calculated to set up the backs of the people throughout the Australian colonies. There is nothing on which these colonies are more touchy than interference of this kind, and when Lord Lamington tells us, not what is the judgment and opinion of his constitutional advisers, but what is his personal opinion, and that of Australia generally, he is going outside his functions in a way which will be bitterly resented in Australia. We have the same thing in regard to the Governor of New Zealand, when he gives his personal opinion as the opinion of Australia, although in much less strong language

than that of Lord Lamington. As these debates go on I think we shall find more and more that this is not a legal or a technical question. The hon. and learned Gentleman the Member for South Longford, who represented Canada in the celebrated negotiations as to the Privy Council in 1873, knows how the proposals on that occasion failed and utterly broke down. Lord Selborne took one view, and Lord Cairns took another, and the whole of Lord Selborne's proposals fell to the ground. This matter will not be settled as a technical and legal question, but as a moral and political question. The hon. Member who spoke last said that a Canadian statesman had told him that the Privy Council appeal was the last link left between the Empire and the Colonies. But it seems to me that the Empire rests on stronger links than any Privy Council appeal. These links are the flag, respect for the institutions of the Empire as a whole, the provisions made in regard to defence, which rest mainly on a broader field, representations by the Governor General, and common service in arms, to which the hon. Gentleman himself alluded. These will always form much stronger links than any appeal to Imperial Courts. In 1885 when the Federal Council for Australia Bill was first brought before the House of Lords, in which it was introduced by the Government of which the right hon. the Secretary of State for the Colonies was a member, and again, afterwards, when it was introduced here by the incoming Conservative Government which had to pass it through this House, an argument was used by the late Lord Derby in the other House, and by the present Lord Derby in this House, of a most curious kind, which bears very closely on the present Bill. They said that that Federal Council Bill had come before Parliament with peculiar sanctity. To use the words of the late Lord Derby, "it came with this special recommendation that it was a scheme which the Australian community had devised for itself." As compared with the South African Bill of 1877, and the Canada Act of 1867, the Federal Council Bill was not prepared here, but by the Australian Parliaments. But the Bill before us is presented with an even higher sanction than the Federal Council Bill of 1885. It has passed, as no other Constitution in the British Empire has passed, through the ordeal of a reference to the whole

people of the country to whom it concerns. If there is any vital necessity in the interests of the British Empire, or in the interests of the sanctity of treaties, why this Parliament should pull the Bill to pieces, then no doubt this Parliament is bound to exercise its power; but it appears to me that the Colonial Secretary has failed to show the House that there is any such overwhelming necessity for dealing in that manner with it.

MR. VICARY GIBBS (Hertfordshire, St. Albans): The right hon. Gentleman the Leader of the Opposition says that the question in regard to the retention of the Privy Council appeal is a small technical point; but I do not think that anyone on this side of the House will hesitate for a moment to agree with the right hon. Gentleman the Member for the Forest of Dean, that it is a political issue. It has been said that the delegates represent Australian feeling in regard to Clause 74. I hold that the delegates represent a very strong and proper feeling in Australia in favour of Federation, but nothing more. Interesting as it is, and important as it is that this Bill should have been submitted by referendum to the people of Australia, the real question asked in the reference was whether the people desired to federate or not. Each individual did not vote on every detail in the Bill. The right hon. the Leader of the Opposition said that the speeches should be short and few, but he made a speech which was certainly calculated as much as anything could to stimulate debate. I venture to say that when he spoke of the action which the Government contemplate, and which I most heartily and cordially approve of, as being an open rebuff to the people of Australia, he was saying what is actually mischievous, and which ought not to have come from a man in his position. It is a painful commentary on party politics that such a remark should have been made by the Leader of the Opposition. I know Australia and the Australians, and I believe they are not so silly as to be influenced by such a remark. They will have regard to the tone of the Colonial Secretary's speech, and to the proposal he has made for a new Court, and they will see the generous recognition of the part which the colonies themselves ought to play in that new Appellate Court. I cannot agree alto-

gether with all that my hon. friend the Member for York has said in disapproving of that tribunal. I cannot think the colonies will be influenced by a name. They will look at the facts, and that in that tribunal they themselves are to have a place. The Leader of the Opposition complained that the Colonial Secretary had referred to the newspapers, and said, "We all know how newspapers have been manipulated." Well, I do not know how newspapers are manipulated; but I do know the Australian papers well. I lived for two years in Melbourne, and you could no more manipulate the whole Victorian press to express a particular opinion than you could the whole London press. It would be absolutely impossible. Clever manipulator as the right hon. Gentleman may be, he could not undertake to make *The Times*, the *Standard*, and the *Daily News* all write in the same tone on some great public question unless he had public opinion behind him. No more could he manipulate the *Age* and the *Argus*, the two leading newspapers of Melbourne. Again I say it would be absolutely impossible. If the Australian newspapers are unanimous on the point it is a most remarkable thing, and a striking demonstration that the great weight of public opinion in Australia must be on the side of the Government. It was said by the Colonial Secretary that the banks and insurance companies were in favour of the Government proposal, but the right hon. Gentleman the Leader of the Opposition said, "How do we know that the banks and insurance companies were not against federation?" We do not know whether the banks or insurance companies were in favour of or against federation, because that is a question that does not concern them; but this we do know—that they, like all the commercial opinion of Australia, are in favour of the appeal to the Privy Council, because it is in the interest of men who trade in Australia. That is not gossip, but I know it as a fact by being in constant weekly communication with Australia, and it is important for the House that they should realise that fact. I have been asked whether if the 74th Clause was amended it would involve a fresh referendum. I do not myself believe that for a moment. I can quite understand that the delegates were most anxious lest they should do anything which would commit themselves

to a fresh referendum. They knew the anxiety and the labour they had gone through to get this length. It is important that we should leave nothing in the Bill which is liable to involve us unnecessarily in friction between us and the colonies, or friction between us and foreign Powers, and both of these risks are involved if the appeal to the Privy Council is not restored. I have had communications with men in important positions in Australia who are set on having the appeal retained. This measure has been approached in a conciliatory spirit, and every care has been taken to avoid saying anything that could be regarded as any sort of rebuff. The colonies are not so silly as to claim plenary inspiration for the Bill. They say it is a good Bill, an important measure, but they do not say it is a perfect Bill in every word. When they know that it is approached by Her Majesty's Government with absolute sincerity, and with every desire to give in to their wishes in everything that affects the colonies themselves, I say it is a monstrous thing that that should be spoken of by the Leader of the Opposition as an open rebuff, and that an attempt should be made to inflame their minds against those who desire their benefit above all things in this world. I am sure that when the right hon. Gentleman considers the matter he himself will regret to have used such words as he did.

MR. HALDANE (Haddingtonshire): I do not propose to measure speculation against speculation with the hon. Member as to how the course the Government propose to take in regard to the Commonwealth Bill will be received in Australia. We shall know that in a week's time, before the Second Reading comes on for debate; and I do not think that at this period we can go into matters which, after all, we shall be much better able to discuss a few days hence. The right hon. Gentleman in the most interesting and eloquent speech in which he introduced the Bill said, and said truly, that he might be envied the position in which he found himself in bringing it in. This is the third time in which a measure of this kind has been brought before Parliament. The first was the great Bill of 1867, which Lord Carnarvon brought forward for establishing the Confederation of Canada.

The second was the South Africa Bill of 1877, and the third is the present Bill. Now, there was this great difference between the first and the third of these Bills and the second—a great line which separated them altogether. What happened to the second Bill for the Federation of South Africa? It fell still-born, and why? Because it was the construction of Downing Street, and not, like the present measure, the expression of the fully realised wishes of the people for whose benefit it was introduced. The right hon. Gentleman spoke of the delegates from Canada coming over here in 1867 to confer with the Government. He might have added that before they came resolutions had been passed throughout the length and breadth of Canada, known as the Quebec resolutions, and that these formed the basis of the Bill which founded the Dominion. Here, again, we have a great scheme which is the scheme of Australia as a whole. It is a scheme brought forward by the delegates sent over to the Imperial Parliament, and I think that the Imperial Parliament ought constitutionally to treat it as a trustee of its own powers rather than exercise these powers freely. The right hon. Gentleman the Colonial Secretary spoke of this Bill as resembling in its main features the Constitution of the United States rather than the Constitution of Canada. I do not think the main features of the Australian Commonwealth will differ so materially, after all, from the Canadian Constitution of 1867. It is true that, in Canada, the general powers of legislation are reserved to the Dominion Parliament, while only specified powers are given to the Provincial Parliaments. But the latter have among these specified powers the widest capacity for dealing unrestrictedly with property and civil rights. Therefore, rather technically than in substance is there a difference between the Provincial Legislatures of Canada and those of Australia. But the difference between the Constitution which this Bill proposes to set up and the constitution of the United States is enormous and fundamental. This Bill is permeated through and through with the spirit of the greatest institution which exists in the Empire, and which pertains to every Constitution established within the Empire—I mean the institution of responsible Government, a Government under which the Executive is directly responsible to—*lay,*

is almost the creature of—the Legislature. That is not so in America, but it is so with all the Constitutions we have granted to our self-governing colonies. On this occasion we establish a Constitution modelled on our own model, pregnant with the same spirit, and permeated with the principle of responsible Government. Therefore what you have here is nothing akin to the Constitution of the United States except in its most superficial features. It is really a reproduction in Australia of the British Constitution upon a large and noble scale. Our Constitution at home is essentially unwritten. So it will be in Australia. The mere framework which the Bill proposes to set up will be filled in, as here, with traditions and doctrines which we have inherited, with tendencies which are not expressed in words, and with bonds which, though invisible to the legal eye, are yet binding and give the people security. And in that mass of unwritten tradition which will be interwoven within the framework of the Commonwealth Constitution will be found the reproduction of what we have at home. There is a body of common traditions, common doctrines, common tendencies, just as there is a body of common law which is the general heritage of our Empire. Therefore I, for one, approach this question of appeal—which is the substantial question at issue—from a somewhat different point of view than that taken by some of my hon. friends. I feel that it is almost inherent in a Constitution such as ours, shared by different parts of the Queen's dominions, preserving the common elements to which I have referred, that there should be some means of a common interpretation. I feel that there is implied in our Constitution, when it reaches a certain stage of development, that there should be a common tribunal which would be a real link, because it would be the property, not of one part of the Queen's dominions, nor of the people in them, but of the people throughout the Empire, wherever there are these traditions, and tendencies, and bodies of common law, and wherever the people require some medium for bringing to a common focus the general opinions and views of the Empire as a whole. I do not think that such a Court, as properly understood, is a Court which ought in the least to conflict with local jurisdiction. I, for one, take the line

that the expression of which in these debates we have heard so much, the "Queen's prerogative," is a mere technical phrase, and should be put aside; and I was glad that the right hon. Gentleman the Colonial Secretary did put it aside. Our self-governing dependencies have the right to set up their own Courts of Judicature if they please, and to say that these Courts are final. I do not want to see the decisions of their local Courts interfered with. I should be glad to see the Courts of Australia finally dispose of the great mass of ordinary litigation; but I think there should, for the special and limited class of questions to which I have adverted, be a Court of yet higher consideration. I come now, in view of that, to the specific proposition, by way of amendment, to which the right hon. Gentleman has drawn our attention, and it is with regret that I differ from the right hon. Gentleman in some material particulars. I cannot help thinking that if the right hon. Gentleman had obtained his way, if he had not been hampered by the tradition of the sacredness of the judicial position of the House of Lords, which we now know for the first time is to be made a question, it must have occurred to him two years ago that the real way of averting a situation of conflict was to have made the proposal of a great Imperial Court to take the place of the House of Lords and the Privy Council, and to be shared in by the colonists just as it would be by ourselves. I am convinced that you cannot keep the House of Lords jurisdiction as it is at present, and at the same time obtain for the Privy Council the status in the eyes of the Empire which it should be able to occupy if we were contemplating the establishment of a single tribunal. We are in this country 40,000,000 of people, and enormously rich, and the result is that we have appellate business of a very important character which goes to the House of Lords. If there are two tribunals sitting for the dispatch of the same business, the one is starved in order to keep up the other, and the judicial strength inevitably gravitates towards the House of Lords, and until you make the colonials feel that the tribunal to which they come is the same as that to which you yourselves appeal, you will never get their confidence. The constitutional lawyer and the historian have watched with interest the

way in which first Parliament and then the House of Lords have taken away the prerogative of the Crown as the final resort of the suitor, and appropriated it to themselves; the result of that has been that, though the Privy Council is considered good enough for the colonies, it is not allowed in Great Britain and Ireland to be good enough for us. And it was curious to notice in the speech of the right hon. Gentleman that while he was ready to reform the Privy Council by the addition of four Law Lords representing the different colonies, still, he spoke of the amalgamation of the jurisdictions of the Privy Council and House of Lords as if it was a matter to be put off for some time, and he gave as the reason that the colonies were to be consulted. I can see a reason for the colonies being consulted before four Law Lords are put on the Privy Council to represent them, but I cannot see how the colonies have to be so elaborately consulted in this, which can do nothing but strengthen, and it appears to me that there is going to be considerable delay in the fusion of the two tribunals, and that this reform may not take place until perhaps the Parliament after next. I think that this is a great misfortune, and I trust that there is no settled determination in the mind of the Government on those points, because I feel sure that if you are going to get over the difficulty with Australia it would best be done by offering Australia a substitute, which would take the form not merely of a reform of the Privy Council, but of a High Court of Appeal in which they would have membership. If this offer had been made two years ago we should not have heard very much of the controversy which prevails to-day. Australia has not been treated so well as it ought to have been, and the result has been the feeling engendered against the Privy Council, due to neglect on the part of the Imperial Government. Surely the better course to follow is not to amend Clause 74, but to say that the clause will be taken and a new Court proposed. It may seem to be a matter of form, but matters of form are very important when you are dealing with a subject like this. I believe that Australia was never more in a mood to join hands with us. I believe anything of this kind properly offered would be willingly accepted. The offer should be made, but

not pressed. The mother of Parliaments does not coerce her children.

AN IRISH MEMBER: We do not accept that statement.

MR. HALDANE: I say this with great sympathy for the right hon. Gentleman, because he has been at pains to put himself on the best terms with the colonies, and has a difficult matter to negotiate here. I appreciate the right hon. Gentleman's desire to keep the link of Empire. On the other hand, if the alternative course had been taken to the one which has been pursued, we should have been outside the present trouble. I hope it is not too late now to make propositions of this kind in such a form, without amendments to the Bill, which might turn out to be obnoxious to the people of Australia, as to get over this difficulty. We shall watch with anxiety what takes place between now and next Monday. If the people of Australia assent to the propositions of the Government as made, the course is easy; but if they do not assent, then to my mind it is of the greatest importance to make the people of Australia understand that we are not trying to press upon them what they do not desire, but to save for Imperial purposes only a limited right of appeal. There is quite enough appeal left by the clause as it stands to the Privy Council to preserve the existence of the Court, and I would rather see this matter initiated in strict accordance with the wishes of the people of Australia, wishes arrived at after prolonged conferences which must be taken to be authoritative, than in a shape in which they do not desire it.

MR. STANLEY LEIGHTON (Shropshire, Oswestry) said the hon. Member who had just sat down appeared to be advocating the policy of waiting to see how the cat jumped. He said, "Wait until Monday and then you will see," but that was not quite the way in which to approach this question. The view of the right hon. Gentleman below the gangway who represented the Forest of Dean was also a very narrow one, consisting as it did of the argument that not a single word of the Bill ought to be altered. If

no word of the Bill was to be altered, why waste words discussing it? It seemed to him that it would be a most uncomplimentary thing to the Australian people if the Bill was passed without discussion, and discussion meant possible amendment. From the statesmanlike speech of the Colonial Secretary, it must have been patent to the House that there was no idea of forcing anything on colonies. It was an old axiom that it was bad policy to force the best form of law on an unwilling people, and it was gratifying to know that as at present constituted the Privy Council was not to be forced down the throats of the Australian people. The principle of appeal was not objected to, but what was objected to was the appeal to this particular Court in its present form. The hon. Member for York had made some observations with regard to the judicial proceedings of the Privy Council; but, with the exception of some gentlemen of the long robe, very few people knew what the Judicial Committee of the Privy Council was, of whom it was composed, what it did, and where it held its court. He [Mr. Stanley Leighton] had determined ten years ago to make a search and make quite sure that it not only had a name but a local habitation, and he inquired of all his friends "Where is the Privy Council?" and no one knew. He asked judges and the like, and was referred to "Whitaker" and a little book entitled "Things Not Generally Known," from neither of which could he extract the desired information. He then conceived the idea of starting at the top of Parliament Street and knocking at every door and inquiring if the Privy Council was at home, and in the course of his peregrinations he came to a door at which a policeman was standing, who, in answer to his inquiries, directed him up a small back staircase, and upon entering a small room on the second floor he found himself in the presence of the august assembly. There was no accommodation for strangers. It was not surprising that in such a position of obscurity this august Council was hardly appreciated, or even known; but who was to blame? First of all, the lawyers. When they built their palace of justice, why did not they find a home for the great Court of the Empire, a Court which throws all others into insignificance, a Court with the farthest-reaching jurisdiction in the whole world, farther-reach-

ing than that of the Roman Curia, and deciding the rights of millions of people and questions on the most varied law? Why was such a Court relegated to an upper chamber difficult of access? In the reign of William IV. an Act was passed for the reform of this Court, and it was provided that certain colonial as well as Indian judges should sit upon the Bench. But no colonial judge was appointed till five years ago. Ten years ago he himself pressed the necessity for further reform, with all the power a private Member possessed, upon the Government of Lord Salisbury, and he was told the matter should receive consideration; but that Government went out of power, and no consideration was given to the matter. Five years later he pressed the same consideration on the Government of Lord Rosebery, and no doubt, so far as the Colonial Office was concerned, would have received the same attention as before; but fortunately the matter was taken up by Lord Rosebery personally, who brought in a Bill limited in extent, but adding three judges from the colonies to the Judicial Committee. He agreed with the hon. Member for Had-dington that if this matter had been dealt with five, or even two years previously, Clause 74 would not have appeared in this Bill. The people of Australia were to be congratulated upon having brought this matter to the attention of the Government. The Government would have allowed the matter to drag on till the Day of Judgment had not pressure been put upon them, but now there was some hope that a new, permanent, and effective colonial representation would be placed upon the Privy Council, and that we should really have a Court of Appeal for the whole Empire. For this we thank the Australian people.

Question put, and agreed to.

Bill ordered to be brought in by Mr. Secretary Chamberlain, Mr. Balfour, and Mr. Attorney General.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

"To constitute the Commonwealth of Australia," presented accordingly, and read the first time; to be read a second time upon Monday next, and to be printed. [Bill 199.]

HOUSE OF COMMONS.

*Monday, 21st May, 1900.*COMMONWEALTH OF AUSTRALIA
CONSTITUTION BILL.

[SECOND READING.]

Order for Second Reading read.

THE SECRETARY OF STATE FOR THE COLONIES (Mr. J. CHAMBERLAIN, Birmingham, W.): In moving the Second Reading of this Bill I want to call the special attention of the House to the amendments which we have embodied in the Bill and which constitute the difference between our Bill and the Bill as it was originally presented to us by the delegates from Australia. I mentioned, in introducing the Bill, that there were a certain number of drafting alterations of no serious importance to which the delegates had agreed, and I do not propose to refer to them again. They are very trifling in extent, and, as I say, of no serious importance. But there were two points of very considerable importance. The first was the application of the Colonial Laws Validity Act to the legislation of the Commonwealth Parliament. We considered that a doubt had been created as to whether that would apply to the work of the Commonwealth. That doubt arises entirely from the introduction into the Commonwealth Bill of a definition of the word "colony" as "a colony or province," which seemed, therefore, specially to exclude "commonwealth." But having had the advantage of further discussion with the delegates, Her Majesty's Government and the delegates from Australia are now entirely agreed that the best way of meeting this difficulty and of removing any doubt will be to omit from the Bill the words defining a colony. When those words go out the doubt which they raised will cease to exist, and it will be unnecessary to make any further alteration. So far, therefore, as this point is concerned, we have come to a perfectly satisfactory agreement. Perhaps I ought to say here that when I speak in future of the delegates from Australia I refer specially to the delegates from New South Wales, Victoria, South Australia, and Tasmania. It is well known that the delegate from Queensland differed from his colleagues in regard to the important point of the

appeal. The question of the right of appeal is undoubtedly one of very substantial importance, and I have explained the principles upon which Her Majesty's Government proposed to deal with it. I stated, in the first place, that we had come to the conclusion that, whatever our opinions might be as to the value or advantage of any particular provision in the Australian Bill, so long as it dealt exclusively with Australian interests, it would not be wise or desirable that the Imperial Parliament should interfere. We might make suggestions, as indeed we have made suggestions, but if they were not accepted on behalf of the Australian colonies we did not think it was our duty to interfere or to insist upon amendments against their settled convictions. On the other hand, I also ventured to lay down as an important principle that wherever the interests of Her Majesty's subjects outside Australia or of Her Majesty's possessions outside Australia or our relations with foreign countries were concerned—in those cases we were acting as trustees for the Empire, and we had a right to claim that the existing power of appeal should in no way be lessened or affected. I confess that in the discussion which I have had the honour of having with the delegates I have never seen that there was any very real difference of opinion between us. It is quite true that Clause 74 as it stood in the Bill violated the essential principle which I have laid down. It did propose to limit the right of appeal in cases in which other than Australian interests were exclusively concerned. But even in Clause 74 as it was originally drawn there was an exception made. The clause read—

"No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this Constitution or of the Constitution of a State unless the public interests of some part of Her Majesty's dominions other than the Commonwealth or a State are involved."

It is perfectly evident to me from the introduction of those limiting words that the framers of the Constitution at the convention themselves recognised a distinction between matters which were Australian and matters which were extra-Australian. But the distinction in that clause did not go far enough. The phrase "public interests" was so ambiguous that

it rendered it uncertain whether the private interests of investors, for instance, or of any body of Her Majesty's subjects would be held to be the public interests of any portion of Her Majesty's possessions, and a very large class, therefore, of British subjects interested in Australia would be shut out from their full right of appeal by the clause as it was originally drawn. I pointed out, also, what perhaps from the Imperial point of view was of even greater importance, that questions of foreign relations which might arise in many subjects which were permitted to the Federal Parliament to legislate upon would also be excluded from all possibility of appeal to the Privy Council. It seemed to me that that was a matter of so much importance to the United Kingdom especially and to the Empire at large that we could not, in consideration of the duty and responsibility imposed upon us, agree to the Bill as it stood in that respect. We endeavoured to meet these objections, which we ourselves felt, and to make what we believed was the intention of the Australian people and of their representatives more clear by amendments which have been embodied in the Bill and which are made certainly not in our interest alone, but in pursuance of that trusteeship to which I attach so much importance. I ventured to say, when I was introducing the Bill, that the proposal of these amendments by Her Majesty's Government was not likely to be in any way resented by the people of Australia. I repudiated altogether the notion that they would be construed as a flouting of their representatives or an open rebuff to themselves. I said there was no fear whatever, in my opinion, of any serious conflict between ourselves and our kinsmen in Australia, and that the discussions had been, and would be, conducted throughout in a friendly spirit. My confidence has been, I think, wholly justified. These proposals of ours have been before the people of Australia now for a full week, and anyone who has taken the trouble to read the reports which have come home to us will be convinced, as I am, that our proposals have been favourably considered in most cases, and in all cases generously considered, by the people of Australia. The evidence shows that the people of Australia recognise thoroughly the spirit in which we proposed these amendments, and that they ridicule the idea that any

insult was intended or was conveyed by these amendments; and they have shown their willingness to give the fullest consideration to those arguments which we have put forward in their support. But this treatment of the subject has not, I am glad to say, been confined to the people of Australia. The delegates to whom I have referred, and who, no doubt, differed from us in the first instance in regard to this matter, have treated it subsequently in precisely the same considerate spirit. They also have been willing to recognise that we have a duty thrown upon us which we cannot ignore, and they have endeavoured in every possible way to meet our wishes and to prevent any disagreement. No doubt they came to this country in the belief that they had a mandate to secure, if possible, the passage of this Bill intact; and I do not for a moment doubt that they would have preferred, if we had been able to agree with them, that the Bill should have been passed exactly as it was produced in Australia; but, finding that to be impossible, they have, as I have said, treated the matter in a most considerate spirit. They have discussed with us various methods of meeting the objections which we took to the original Bill, and, so far as the four delegates are concerned, I am happy now to be able to inform the House that we have come to an absolute agreement. This agreement follows exactly the principles I have laid down. That is to say, it leaves Australia absolutely free to take its own course where Australian interests are solely and exclusively concerned, and it makes provision in all other cases, in which other than Australian interests are concerned, that the right of appeal shall be fully maintained. The delegates pointed out to us that their desire, and what they believed to be the desire of the people of Australia, was that where differences arose as to the interpretation of the Constitution between two States or between any one State and the Federal Parliament, and where, therefore, Australian interests were exclusively concerned, they should have the right of dealing with such questions finally in Australia, and I at once admitted, on behalf of Her Majesty's Government, that that was entirely in accordance with the principle which we had constantly laid down—that if it could be shown that in questions of that sort Australian interests were exclusively

concerned, we claimed no right whatever to interfere with their decision. Accordingly we have agreed to exclude that particular case from the clause in which an appeal lies to the Privy Council. But we asked that, inasmuch as experience has shown, in the case of Canada, that an appeal in such cases was valued by both parties, and that experience might show in Australia that it would be in the future a desirable thing to have a Court free from all prepossession, to which both parties could appeal, words should be inserted giving this right of appeal in every case in which both parties consent. The effect of this understanding will be that Clause 74 will be exactly reversed; that whereas, in the original clause, appeal was to cease in all cases except where the public interests of some portion of Her Majesty's dominions outside Australia were concerned, in the clause as we now propose to insert it an appeal will lie in every case, except in the cases where Australian interests alone are concerned. That, I think, is a form of clause which gets rid of practically every one of the difficulties which I anticipated when I referred to the original clause in introducing the Bill. There was another point to which we also took exception. It was a provision in the Bill which gave the Federal Parliament the right to pass laws amending or limiting the right of appeal. The delegates pointed out to us that this right is inherent in the powers of every Parliament in Australia. The Parliament of every single State in Australia has in its general powers to make laws for the peace, order, and good government of the country, the power, if it pleases, to make laws limiting the right of appeal, and that power is subject to the right of Her Majesty to disallow or to have reserved any Bill dealing with the subject. The delegates contended that, as their Constitution specifically refers to the subjects which alone can be treated by the Federal Parliament, it was necessary specifically to mention this subject, or else the Federal Parliament would have less power than the Parliaments of the constituent States. The reasonableness of that we fully acknowledged, but we felt that if we specifically gave this power by this Constitution we might be assumed to be giving away the right of reservation with regard to this subject. It appeared to us to be quite possible

that hereafter we might be accused of breach of faith if, when the Federal Parliament had legislated, we had reserved a Bill under the powers given to us in another clause of the Constitution. The House, probably, is aware what the power of reservation is. When an Act passed by a self-governing colony is reserved it is treated as a dead letter, and it does not come into operation at all unless in the course of the next two years Her Majesty formally signifies her assent. She has not, however, to announce her disallowance, or to veto the Act; she has only to refrain from allowing it. Now, the delegates have agreed that if the power to deal with the subject is maintained in the Bill there shall be added this proviso:—"Provided that in every such case such Act shall be reserved for Her Majesty's pleasure." So that, whereas all other legislation of the Commonwealth comes under the general rule that it may be reserved, if the Commonwealth should deal with this specific and delicate subject then the proviso is that it must be reserved, and, of course, Her Majesty's Government for the time being will have a full opportunity of considering what the nature of the legislation is and what advice they should give to Her Majesty in regard to it. I may say at once that these suggestions which have been worked out in the friendly discussions that have been going on entirely meet the views of Her Majesty's Government. They give us all that we ever asked for, and they have the enormous advantage of being equally satisfactory to the delegates of the colonies concerned. I have received this morning the following letter from the four gentlemen named—

"Whitehall Court, May 21st.

"Commonwealth of Australia Bill.

"Sir,—In relation to our interview of last Thursday, we have no hesitation in accepting your offer to substitute the amendments then discussed in place of the amendments at present proposed in the Bill, and thus secure its passage without further alteration. We thank you heartily for so far meeting our request that our Bill should be accepted without alteration.

"We have the honour to be, Sir,
your obedient servants,

"EDMUND BARTON. /

"ALFRED DEAKIN.

"C. C. KINGSTON.

"P. O. Fysh."

I will read to the House the form in which the amendment with regard to the Court

of Appeal now stands, but I wish to guard myself against being supposed to be absolutely pledged to the exact words. All this business has had to be conducted under a certain amount of pressure, and it may be that, by mutual agreement, we may find that some alteration in a particular word may hereafter be necessary and desirable. As it stands it is as follows—

“Appeal to the Queen in Council.—No question howsoever arising as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, shall be capable of final decision except by the High Court, and no appeal shall be permitted to the Queen in Council from any decision of the High Court on any such question unless by the consent of the Executive Government of the Governments concerned, to be signified in writing by the Governor-General in the case of the Commonwealth and by the Governor in the case of any State.

“Except as provided in this section this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of her Royal prerogative to grant special leave of appeal to Her Majesty in Council. Parliament may make laws limiting matters in which such leave may be asked, provided that any proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.”

I have spoken entirely of the four delegates, representing four colonies, whom I have named. There are two other colonies that were concerned in this matter. One is Western Australia, which has not, of course, up to the present time agreed to enter the federation, but to whose Parliament and people the question is very shortly to be put. From the officer administering the Government of Western Australia I have received the following—

“In reply to your telegram from Mr. Barton, forwarded to my responsible advisers through the Premier of New South Wales, my responsible advisers prefer the amendments proposed by the Imperial Government to those suggested in the telegram of Mr. Barton. They consider that there should be no power in the Federal Parliament of limiting matters of appeal to the Queen in Council, and are of opinion that in all matters there should be a right of final appeal to one tribunal for the whole Empire.”

I communicated, of course, to Mr. Dickson, the delegate of Queensland, the proposals which had been made, and which appeared to Her Majesty's Government to be satisfactory. He telegraphed accordingly to his Government, and he has

received from them, late this afternoon, the following reply—

“Do not approve of modifications suggested by Mr. Barton in Imperial amendments. Our great anxiety with regard to the retention of the plenary appeal to the Privy Council has been to ensure that constitutional disputes shall be referred to an impartial tribunal free from local bias. It is out of the question that the successful party in the Federal Court would consent to appeal to Privy Council. Hope Secretary of State for Colonies' original proposal will be given effect to; public opinion within colony strongly in favour of it.”

Of course it is evident from these two telegrams that the two colonies concerned greatly prefer our original proposal. We appreciate very much this support of the views which we expressed. We have not altered those views in the slightest degree. We think that in the interests of Australia herself it would be most desirable that the plenary right of appeal should be preserved, but we cannot, in accordance with the principle to which we have committed ourselves—namely, not to interfere where exclusively Australian interests are concerned—we cannot take sides with the two colonies as against the four. If even yet it were still possible to persuade the representatives of the four colonies to make a further concession, nothing would give greater pleasure to Her Majesty's Government. But that is a matter which, in our view, must be discussed between the colonies themselves. Probably it would be better discussed by them in Australia, and we shall be prepared to register their decision, whatever it may be. I hope that, after the statement which I have been able to make, the House will not think it necessary to delay the progress of this Bill by any considerable discussion. Immediately the Bill has passed a Second Reading, I propose to lay upon the Table the form which the amendments will take in order to carry out this agreement. I hope that its very early passage may then be confidently anticipated. I hope that the Bill will be passed unanimously, and I firmly believe that in that case, even without any such further alteration as Queensland and Western Australia desire, the House may pass the Bill with the full conviction that in sanctioning the union of Australia they have in no way impaired or weakened the unity of the Empire, and we shall be able to contemplate the consummation of this great achievement without the slightest drawback to the pride

which we feel in the wisdom and the patriotism of our Australian kinsmen.

Motion made, and Question proposed, "That the Bill be now read a second time."—(*Mr. Secretary Chamberlain.*)

MR. ASQUITH (Fifeshire, E.): I cannot but express the gratification which I am sure will be shared not only by the people of this country, but by Her Majesty's subjects throughout the length and breadth of the Empire, at the welcome but not wholly unexpected announcement which the right hon. Gentleman has made. This is not an ordinary occasion. This is a measure which transcends by reason not only of its intrinsic importance, but of the influence which its adoption must exercise on the future of the Empire—a measure which, I venture to say, transcends in interest and magnitude almost any legislative proposal of our time. Therefore it would have been unfortunate if it had not been most cordially welcomed by all sections of opinion in this country, and received the unanimous assent of all parties in this House. The several Australian States have grown from infancy to manhood almost within living memory. Each of them has developed a character and individuality of its own. All alike have contributed to the strength and vitality of the Empire. But the Australian Commonwealth, the Commonwealth of the future, is a whole which we believe is destined to be greater than the sum of its component parts, and which, without draining them of any of their life, will give to them, in their corporate unity, a freedom of development, a scale of interests, a dignity of stature which, alone and separated, they could never command. This great constitutional instrument, itself a most characteristic product of the methods and spirit by which the English-speaking races work out for themselves their own political salvation—this great constitutional instrument was certain, as I have said, to receive, as it has received, a cordial welcome from all shades of opinion in this country. During the last few weeks it has appeared as though that welcome might be marred by one discordant note. But I am sure I am speaking the unanimous opinion of this House when I say that we all rejoice that, by a wise exhibition of tact on the one side and the other, whatever

differences may have emerged are now forgotten in a settlement which reflects equal honour on the Colonial Secretary and the Australian delegates, and that this great fabric, which has been so skillfully and laboriously built, may now be launched without friction or delay on a voyage in which it will carry with it, not only the fortunes of the Commonwealth, but the hopes of the Empire. After the statement which the right hon. Gentleman has made it would be only a waste of time to pursue in any detail matters which have been the subject of controversy during the last few weeks. At the same time, I do not think it would be right to let the occasion pass without saying one or two words—which, as far as I am concerned, will not be couched in a controversial spirit—both on the character of the difficulties which have arisen and the nature of the settlement by which they have now been happily overcome. I accept to the full, and I believe everyone in the House accepts, the two canons which the right hon. Gentleman laid down last week, and has repeated to-night, as to the principles which should govern the action of Parliament in a matter of this kind. What are they? On the one hand this Bill—being as it is the mature outcome of nearly a generation of agitation and discussion; having run, as it has, the gauntlet of debate in the representative Conventions and in the Legislatures of the separate colonies; having been, finally, solemnly ratified by the voice of the vast majority of the Australian people—comes before us with the almost overwhelming presumption that it represents their deliberate judgment on the form of their future government. That is a presumption which ought not to be lightly displaced. On the other hand, I agree entirely with the right hon. Gentleman that we, in this Imperial Parliament, are by the necessities of the case the ultimate custodians and trustees of Imperial interests; that that is a duty we cannot abdicate without being false to the mandate which sent us here; and, however wide and authoritative may be the representations made to us from any part of the Empire, we are bound to interfere—we have not only a right, but a duty to interfere—if those plans should be inconsistent with the welfare of other parts of the Empire, or offer menace or danger to our Imperial interests. As to the cogency of these two principles, I do

not think there is the slightest difference of opinion in this House. But, again, there must be clear and unmistakable proof that proposals which have received the unanimous assent of a large section of the Empire (such as these proposals have received) are inconsistent with Imperial interests, before the Imperial Parliament would be either disposed, or think it its duty, to interfere. As we know, traces of such danger have been discovered, in the case of this Bill, in the 74th clause in the form in which it was passed by the people of Australia, and in which it was originally presented to us. Expressing my own opinion, which, I think, is widely shared, I say those dangers have, in my judgment, been greatly exaggerated in some quarters. I am not complaining of the action of the Government, because I think they were bound, by the necessities of their position and by the duty they owed to the country, to exercise a most scrupulous and, if I may use the phrase without offence, an almost jealous vigilance before, on their authority, they submitted them to the Imperial Parliament. But there has been in some quarters a certain amount of unnecessary exaggeration. In my judgment if there ever were any danger—I do not myself think there is—of the people of Australia using the powers given to them by this Act in a manner hostile or injurious to the interests of any other part of the Empire, this danger would arise far more from the clauses that confer legislative powers upon their Parliament than from the clauses which confer the power of interpretation upon their Courts. I am not saying that these dangers are real dangers, but the right hon. Gentleman in his speech last week instanced in his category of subjects in which possible injustice, or at any rate disagreement, might arise, maritime jurisdiction, the Pacific Islands, foreign enlistment, and external affairs. These are all among the cluster of subjects as to which the power of legislation is given to the Federal Parliament of the future, and, in my judgment, we are, on the whole, better protected against any possible abuse of those powers by the right which is conferred upon the face of the statute itself upon the Imperial Government either to veto, or still more to reserve them for Her Majesty's approval, than by any provision limiting the powers of the Courts, or

providing for appeal on questions of interpretation. It is quite obvious that you may have a statute as to the interpretation of which no Court could be in doubt, and the 74th Clause would be no protection to Imperial interests in the case of a statute of that kind, whereas the power given to the Government to reserve it before it received approval is an ample and sufficient safeguard against any danger of that sort. That being so, may I add that I am one of those who look forward to the constitution of a real Imperial Court of Supreme Appeal, a Court not to be forced on the colonies against their will, but a Court of such character, having such attributes, as would appeal to every part of the Empire, and under such arrangements that the prerogative of the Crown and leave to appeal to the Queen in Council upon fit questions and upon proper conditions would not be regarded as a fetter that would be dangerous, but as a safeguard to liberty. I think that the House will agree—and the matter is not foreign to the discussion on this Bill—that the constitution of such a court is desirable, not in order, as is sometimes stated, to have a uniform interpretation of the laws of the Empire. You cannot have a uniform interpretation of diverse systems of law. One of the great glories of the Roman Empire was that the system of jurisprudence which we know as the Roman law extended in its application practically throughout the Empire. Napoleon will be remembered by the only beneficent act of his life which remains, and which still influences the lives and the actions of the vast Continent of Europe over which his dominion was once overspread. Napoleon, by sweeping away all the separate systems of local law which prevailed in Europe, and substituting the Code Napoleon, with its comparative simplicity and reasonableness, did undoubtedly introduce a uniformity of law throughout his empire. That has not been the method of the British Empire. Our method has been totally contrary. We have always proceeded on the principle of jealously preserving and maintaining local laws and usages. Go into the Judicial Committee of the Privy Council for a single week, and watch its operations. You will see it deciding on one day a question according to the Roman Dutch law; on another question the same according to the French law

as it prevailed before the Revolution modified by subsequent Canadian statutes; and on another day according to the common law of England as modified by Australian or New Zealand legislation; and at the end of the week according to the customs of the Hindu or Mohammedan law. It is one of the great glories of our jurisprudence and one of the great links that have kept our Empire together that our Courts have maintained, most jealously and scrupulously, the integrity of these different systems of law which conform to the historical traditions and local necessities of the different parts of the Empire, and have prevented, as far as they can, any filtration of ideas from a foreign source of law which might permeate and corrupt another system. It is not because we want a uniform interpretation of law that we desire this great Imperial Court, but because we wish there to be here, at the centre of the Empire, a Court so authoritative and weighty from its composition and the attainments of its members that all our different colonies and dependencies, when questions arise, such as are certain to arise even in Australia among the different States that constitute the Commonwealth, will look upon it as a tribunal of unsuspected impartiality and possessing that authority which no local Court, of however high a character, could attain to. I am certain the constitution of such a tribunal as that will be one of the best links by which we can maintain the unity of the Empire as a whole. But it is only fair to our Australian fellow-subjects to say that, at the time when this Bill was framed and submitted to the judgment of the Australian people, not only was no such Court in existence, but, so far as we know, there was no such Court contemplated. If they had at that time a knowledge that it would form a part of the scheme of the Government or the Imperial Parliament to constitute a tribunal of that kind, I doubt whether Clause 74 would ever have appeared in the Bill. It is said you have the Judicial Committee of the Privy Council. I desire to speak with the utmost respect of the Judicial Committee of the Privy Council. It would be invidious to mention the names of living members, but I do think that an opinion upon any question of law to which the late Lord Herschell and the late Lord Watson assented is as likely to be right

as any proposition can be, in a sphere in which there is so much of what used to be termed "contingent" matter as the field of practical jurisprudence. But for some reason or other the Committee of the Privy Council have been very little resorted to by our Australian fellow-subjects. The Attorney General gave us the other night the figures, and I think there is something less than an average of twenty cases in the year; and when we remember what Australia is, its area and population, the growing complexities of its industrial and commercial interests, and, above all, that healthy zeal for the pursuit of justice according to law, which is engrained in the British temperament, and not changed by sky or climate—putting all these things together, it does show, in my judgment, a certain want of confidence in the tribunal, a certain disinclination to resort to it, that we find appeals from Australia so few year after year. I believe that tendency will be reversed, and an exactly opposite current of feeling created, if such a change were made as I have ventured to suggest in my last few sentences. I come now to the difficulty alluded to by the right hon. Gentleman, and his method of solving it. I confess if I had been drawing up a Constitution for Australia I should very much have preferred to have left this question of appeal as it was left in the Constitution of Canada, because it appears to me there is very good ground for the contention that a distant court removed from local prepossessions, and even, perhaps, from local knowledge, may be said on constitutional questions to be a more impartial arbiter. But I cannot see in the proposal Australia made and approved—namely, that they should keep their constitutional questions for home consumption, and not export them from time to time for decision in this country—I cannot see in that anything that in the least degree militates against our Imperial unity, or constitutes any danger to other parts of the Empire. I quite agree that the provision ought to be confined to matters purely Australian, and as I read the clause in its original shape that intention seemed to be given effect to; but if that intention is made more clear, as the right hon. Gentleman and his advisers think it is, and as the Australian delegates appear to believe it is, by reversing the form of the clause into an affirmative from a negative shape, I am

quite sure nobody will make the least objection to the change. There is one other point I think more serious—namely, the proposal to reserve to the Federal Parliament of Australia the power still further to limit the right of appeal to the Privy Council. That is a point on which, in my judgment, we were already sufficiently protected against any real grievance by the Governor's power of veto or reservation, as the case may be, expressed on the face of the statute. If, as the right hon. Gentleman has said, ambiguity has been suggested in the construction of the statute as a whole, so that it might be left open to the contention that the power of reservation does not apply to this case, I agree with him that it is most desirable and prudent to place it there in connection with the clause itself, so that we may avoid all future complications. What is the conclusion of the whole matter? I have come to the conclusion that there was never any very great gulf of difference between the opinions of the Government and the Australian delegates. I do not wish to use language of recrimination, and I have not, I think, indulged in it; but I think we must all regret—and perhaps the right hon. Gentleman more than any of us—that at the time when negotiations were going on in Australia, when proposals were submitted to the various Australian legislatures, discussed, and put to the referendum of the whole people—I am sure we must all regret that more attention was not paid to this particular point, and that what I am certain would have been a friendly and fruitful interchange of opinions, thereby avoiding misunderstandings, did not take place. I can quite understand, and I give the right hon. Gentleman full credit for it, that he may have felt indisposed to obtrude the Imperial factor into a purely domestic discussion, and that he may, perhaps, have been over-scrupulous in abstaining from anything even in the way of suggestion which might seem to bias the opinion of the Australian people or the Conventions. I have only to say in conclusion that I believe men of all parties in this House, now that these difficulties have been got rid of, will join in welcoming this measure as, perhaps, the most signal illustration in our history of the successful development of that process of reconciling local liberty with Imperial unity which is the strength and safeguard of the British Empire.

MR. HENNIKER HEATON (Canterbury): I simply desire, as one having considerable interests in Australia, to express my high gratification at the settlement of the question that has been arrived at. The arrangement will be received with great rejoicings throughout that important Southern land. Before concluding these brief remarks, I wish to compliment the Secretary of State for the Colonies on his tact and wisdom in inviting to this country the brilliant band of Australian statesmen—the delegates here—who not only have helped to arrive at an amicable settlement, but by their eloquent speeches have enlightened the people of this country on the resources of Australia, and its patriotic regard for the mother land.

MR. BLAKE (Longford, S.): I have heard with a glad heart the statement of the right hon. Gentleman the Secretary of State for the Colonies; for I was pained by the reflection that in the condition in which this question was left after the First Reading of the Bill, agreement on a question of transcendent importance should be marred by a seeming disagreement on a wholly insignificant point. The difference was almost microscopic when we analysed on the one hand the principles of action laid down by the right hon. Gentleman, and on the other hand the methods by which those principles were to be applied in dealing with this Bill. I think that, under the circumstances, it is our duty—at any rate I think it mine—to omit all consideration of how Clause 74 stood in the Australian draft, and how it stood in the Bill as introduced into this House, and, in fact, how it stands to day; because as it stands to-day I think that it has practically received the assent of Australia herself. If I may make an observation, it would be that there are one or two points in the view of expediency laid down by the Colonial Office in the course of the discussions with the Australian delegates in which I would have agreed with the Office, and questioned the arguments of the delegates, while there were many considerations in which I think the Colonial Office were wrong and the delegates right in these details. But I would add that while I was prepared to affirm, as I now affirm in the strongest sense, the absolute right of the Australian people to ask that there should be no appeal here in matters wholly internal and affecting their own constitution as between the

States and the Commonwealth, if they so please, I am not sorry that, by the free communications which have taken place, there have been elicited some slight modifications in the expression of that view in the Act of Parliament. I speak from experience; because I know that in the country whence I come, while a different set of circumstances obtains and there are different provisions, there is yet a written Federal constitution; and it was found with us that where bitter controversies had been excited, where political passions had been engendered, where considerable disputations had prevailed, where men eminent in power and politics had ranged themselves on opposite sides, it was no disadvantage, to have an opportunity of appealing to an external tribunal such as the Judicial Committee, for the interpretation of the Constitution on such matters. Therefore I rejoice at two things: first of all, at the indication that there may be, under certain circumstances—I agree not very probable circumstances, for it is part of human nature to suppose that litigants successful in Australia would hardly consent that their action should be re-tried elsewhere—resort should be had to such a tribunal; and, in the second place, that an increase in the effective strength of that tribunal is also recognised as essential. And so I pass away altogether from that phase which might have been, but for the settlement which has been arrived at, the centre of discussion; and I turn to that which has become—as, in my opinion, it ought always to have been—the only subject of debate here, the great work which has been achieved and its immediate and remoter possible future effects. Now, some words upon that larger aspect might reasonably be expected from these benches to-day. It is natural that we, the representatives of the great bulk of the Irish people, should desire to express our cordial congratulations to that large proportion of the population of Australia which is of our race and blood; aye, and to that still larger proportion of the population which, though not of our race or blood, has extended to us a steady and important sympathy in the interest of our Irish national aspirations—that we should express our cordial congratulations to Australia at large, and especially to those Australians with whom we are kin, on the achievement of their great end. It is

natural that we, the representatives of an ancient nation, claiming here, though as yet failing to obtain, the recognition which is our due, should express our earnest good wishes for the unending duration and increasing magnitude and unmarred prosperity of that new nation which is to be recognised by the Act we are now passing. And we rejoice, we who some years ago accepted upon high invitation from this Island the federal system and principle as a plan for the settlement of the Irish question, as a plan for the substantial recognition of our nationality and freedom, consistently with the ideal of a united and reconciled Empire for common concerns—we, I say, who accepted that view, naturally rejoice upon every occasion on which, here or elsewhere, the federal principle receives striking exemplification and is successfully applied. We hope, indeed, that some day you will deal with Ireland, whose case is in some important aspects far easier, in the same spirit in which you have dealt with other communities. You have dealt with them in the full belief that local freedom means Imperial unity. One thing I regret. This moment has been called auspicious for Ireland because of the Royal visit and the ordered wearing of the green. This moment has been called auspicious for the Empire because it celebrates the inauguration of a new federal sister nation amongst the communities of the Empire in Australia—a nation founded by the wholesome process of long deliberation and popular consideration, and sanctioned by overwhelming majorities yonder and by unanimity here. This moment has been called auspicious by some authorities for the Empire because in another corner of it you believe you are laying the foundation, in an unhappy soil moistened by blood and tears, and shaken by force and arms in South Africa, of a new—shall I say?—of a federal sister nation in distant days to come. I regret that, at this auspicious moment, personages most conspicuous in the counsels of the party opposite should have thought it fitting to intermingle with these elements audacious travesties of the facts with reference to the terms and conditions of the Home Rule settlement, and of the sentiments, feelings, and pledges upon which that settlement was accepted by the Irish people. To mix small things with great, may I add one phrase of regret that at this moment, said to be auspicious, because you recognise the importance of

reorganising your Imperial tribunals of final judicature upon the principle of the representation here at home of the great communities abroad; when you are persuading and have ceased to coerce the people to try their cases here, you make the opportunity, for some trumpety purpose of mere Ministerial convenience, to deprive Ireland of the right granted by understanding and sanctioned by custom, the right which for several years she has enjoyed, of that same principle of representation in the Court of final judicature in which her concerns are to be determined. I pass from these subjects of regret with this word, that the great transaction in which we are engaged contains encouragement in all its elements far higher than those trivial causes of discouragement, and gives us heart to persevere in the effort to press upon the minds of those to whom we have to look for relief the conviction which we ourselves entertain, that it is not merely in Australia or Canada, or the remote corners of the earth, that the principles of liberty lead to Imperial unity, reconciliation, and common action. They would do so with even greater force at the heart and centre of the Empire. What is strong in those principles, though oceans may roll between, is strong also—aye, stronger still—if applied to the centre and core and heart, or what ought to be the heart, of this Imperial realm; and we shall yet hope that you may some day give liberty to Ireland in order that you may make that country reconciled to union upon the federal principle. May I touch one personal note? I feel it a great privilege to speak in this House to-day on this question. Colonial born myself, I have witnessed the birth of the Canadian, the first great federal constitution in the Empire. Engaged for thirty sessions in two legislatures, in Government and in Opposition, in working and developing, and making practical the paper forms in which the constitution is written, and that in both its provincial, federal, and imperial aspects, and for ten sessions here a humble labourer in pursuit of the recognition of the federal principle as a means of consolidating the Empire at home through justice and freedom to its parts, I rejoice to be able to say some words of cheer and congratulation to my fellow-colonists on the other side of the globe upon the work they have accomplished. The Colonial

Secretary the other day entered very naturally into some historical and critical considerations with reference to the Canadian as contrasted with the Australian plan. Into these I will not follow him. I will only say that I cannot wholly agree with everything he said with reference to the Canadian Constitution. I do, however, agree that that constitution, owing to circumstances which it would take too long to detail, has more of a centralising element than is to be found in the Australian Constitution, and that from those circumstances and the form of its clauses arose long and bitter controversies, now happily settled; and that very largely by what is the main element even in a written constitution for settling controversies—the common sense, the discretion, the determination, and the decision of the people at large; but also, as is sometimes essential where there is a written constitution, by the decisions of the Courts. In many respects the people of Canada manifested the need of compromise in the structure of their constitution. The Canadian Constitution contains many propositions which are, to my mind, quite illogical, and some of which I have never seen a defence; nor I must own, as a humble student of written constitutions, have I been able to observe absolute perfection in this Australian draft now before us. But, after all, that is not necessary or even common here. After all, in all constitutions the great and saving elements are in the men who work them—in their spirit, patriotism, moderation, and good sense, and their determination to work for the best interests of the people. Although we ought, no doubt, to make the best theoretic constitution we can, it is upon those saving elements, after all, that we shall have to depend; for a very inferior constitution, well worked, is very much better than the best you can conceive if not worked in the right spirit. To these elements it is that I trust when I survey this draft. The Colonial Secretary has stated in terms not too large the magnitude of this achievement. My right hon. friend has followed him in the same vein. Yes, Sir, this is one of the greatest things that has been done. But remember it is not we who are doing it. Thus and thus only can we justify ourselves when we are intending in the course of an hour or two to pass the Second Reading of this great and transcendent Bill.

I will undertake to say that from those who made this constitution and are really responsible for it, it has received quite different treatment. It has demanded weeks of debate and years of deliberation from those who are to live under it; it furnishes almost interminable topics of discussion; and yet we are rightly asked by the right hon. Gentleman opposite, and by my right hon. friend, to agree that we have nothing to say about it. Then who has? The Australian people! I might, as I have said, as a humble student of constitutions, throw out suggestions with reference to some of the most important elements of this work; but I will not even name those elements on which I doubt; for where we cannot amend, it is useless and harmful to assault. And the constitution, whatever may be its drawbacks, is, and I hope it will stand, a noble fabric, fit for the habitation of such men as those who have made it and defended it. It is a noble fabric, fit for noble ends. Yet it may not be useless to touch for a moment upon the genesis of these two great instruments of Parliament; so as to find and to follow our duty here to-day; and to recognise clearly what a difference thirty-three years has made in our methods, and in the advance of popular rights. Thirty-three years ago the Canadian Constitution was passed. At that time in my country, save in one province where local circumstances made it necessary, there was no general election on the question. At that time there was no elected convention to prepare the constitution. At that time there was no referendum, nor any textual preparation of a Bill. At that time there were but Ministerial delegations speaking in conference, resolutions framed by them, resolutions submitted to the Assemblies, addresses to the Crown for legislation not at all in the form of a Bill, correspondence with the Ministry at home, and Ministerial representatives despatched to Westminster to confer as to the framing of the measure. It was framed for introduction here with some few provisions in the supposed Imperial interest, and with a few others which these colonial delegates thought themselves authorised to insert, and so it passed. Yet even then misfortune followed from the non-adoption of more popular methods; for this Parliament was appealed to by one of the smaller provinces—the province of Nova Scotia, where a moribund Legislature, elected before the ques-

tion was on the horizon, had passed an address for the Union—this Parliament was appealed to by the people declaring that they were opposed to confederation. You did not recognise that protest. You determined to accept the voice of the Legislature, and the Act was passed. I should have dilated upon this subject but for this settlement, because it shows the vast importance of obtaining and acting upon recognised popular opinion when expressed in the genuine manner by the people concerned. The circumstance that Nova Scotia had not had the opportunity the Australian States have had of speaking injured the success of federation for at least twenty years, and has been got over only within a recent period. But even then Parliament passed that great Bill as you intend to pass this Bill. It regarded the measure as a treaty or convention between the provinces, and passed it, if I recollect aright, without any substantial alteration. Now all the elements lacking then are present here. You have the march of popular government and administration shown here. You have the methods by which the popular sanction should be obtained laid before us. You have popular resolutions and authority from legislatures. You have freely elected conventions framing the constitution. You have Acts authorising popular *referenda*, and you have popular sanction thereupon. You have the text of the Bill so framed and so approved; and it is upon that we act. There never was an instance of such long consideration and such deliberate sanction, and thus the case for absolute acceptance here in all domestic affairs is infinitely stronger even than it was in the case of Canada. I join in the regret expressed by my right hon. friend, a moment ago, that at quite an early stage of these Australian discussions the Imperial Government did not come to a conclusion as to what they thought vital to Imperial interests, and did not communicate what they thought absolutely essential. I believe that discussion initiated, as I think it ought to have been, on the other side or here, at an earlier period, would have prevented that which might have been an unhappy circumstance connected with this measure. Now I quite agree that a vote on a referendum does not and cannot imply the same measure of assent to all the proposals contained in the measure. There-

is no opportunity for separate expression. It is yea or nay to the whole. But the people knew, as we know, that this constitution was the fruit of compromise and concession. They knew that it was created as the best that was feasible by their trusted leaders whom they had commissioned to do their work. They may have had even a distaste for some of its provisions. What, after all, the people had to determine was whether they would take it all or leave it all. And by what you rightly call overwhelming majorities in every colony—though not at all so overwhelming as those you refuse to recognise every day in Ireland—this constitution was actually passed and accepted. In this great transaction in all matters exclusively Australian, and that is as regards almost all in the Bill, we are not in any sense its authors. The decision may be right or wrong, it may be fortunate or unfortunate for Australia; but it is their affair, not ours. This creature has not been conceived in the womb of this mother of Parliaments. We do but take her on our knees for adoption. We give her a name and place, a title, and a blessing. But we know that she was begotten, fashioned and born on the other side of the globe. Nor is this attitude of ours a humiliating attitude for the mother of Parliaments. It is but a wise, temperate, and dignified recognition of the march of events, of the spread of popular government and popular control. It is indeed a recognition of the fact that this is rather a daughter who is coming of age than a child new born; that she is able to speak for herself, that she has become in truth, as has been said, rather a being now grown up, and is now rather a sister than a daughter nation. Indeed on this view only can the links of empire be maintained. But I may be asked what links are left if on this principle we deal with this great transaction. You may say, "Are we mere registrars of Australian plebiscites? May we not discuss and decide?" I agree in the principle laid down on both sides as to matters exclusively Australian—that we are but the registrars of the Australian will. As to these we are trustees for her of our legislative power, and should use it according to her wish. But as to matters touching the public interests of the Empire, or of parts of the Empire beyond Australia, we are the trustees for

the whole Empire, including Australia. We should give her wishes full consideration. We should weigh fully her views on matters which, though they may extend beyond her bounds, are yet mainly her own concern. We should yield what we may. We should choose between the evils of concession and the perhaps greater evils of dissent. But in the last resort we must decide in the general interest of the whole. You see I go a long way with the Colonial Secretary's general principles of action, which, truly followed, settle the late difference, and conclude points of infinitely greater moment than that on which for a time he broke with the delegates. I rejoice that our attention is no longer fastened on a minor point which would have obscured the magnitude of this great transaction, which would have exaggerated the importance of that minor point, which would have aggravated the character of the very difference, which would have lessened enormously—and this is a most important practical consideration—the chances of a favourable result as to the utility of the jurisdiction you were asserting. If you had the Australian people against you, how many appeals would you have, and how much respect would your tribunal secure? On that ground alone it was of the greatest consequence to those who most value the retention of the tribunal that a settlement should have been reached. What, then, most marks this great achievement? It is the application by the free and well-considered judgment of the Australian people of the federal system of government to that immense continent, thus giving the best chance of good government and contentment to each of the states of which that continent is composed, and to the nation in which they are united as one Commonwealth. So much for Australia by herself. Now what of Australia as part of the Empire? The effective and unified government which will be set up for the nation through the medium of the Commonwealth will make easier of accomplishment all the present pressing Imperial problems as to Australia. That is the point to which my mind now most turns. Agreeing in the principle of leaving to the Australians all the details from the local aspect, I ask myself whether by this transaction in which we are engaged we are really facilitating the management of Imperial problems between

ourselves and Australia. I say we are ; and why ? Because this transaction entered into at their instance strengthens the only real ties of union between the great colonies and this kingdom—the ties of goodwill, the sentiments of affection and contentment, pride and patriotism, springing, no doubt, in great part from common blood, but really maintained and strengthened, mainly everywhere and exclusively in very important quarters, where the tie of blood does not exist, by virtue of the local freedom they have obtained, by virtue of the autonomous growth of their nationalities, by virtue of the development, the peace, security, and progress, enjoyed under local self-government by these great communities within this Empire. Again, it is helpful to the disposition of the Imperial problems between us and Australia, because the Commonwealth, with a greater area, larger and more varied interests, wider views, and unified political powers, will obviously deal with Imperial matters in a higher and broader spirit than could be expected of smaller and separated States, and will thus greatly ease Imperial negotiations. I would appeal only to successive Ministers concerned in this country as to whether that has not been the case with regard to Canada. I know it to have been the case from the colonial side. I know the spirit that has prevailed when questions arose of this description, and I know how far that spirit was due to the consideration I have referred to. I have said Imperial negotiations, because for many years I, for my part, have looked to conference, to delegation, to correspondence, to negotiation, to quasi-diplomatic methods, subject always to the action of free Parliaments here and elsewhere, as the only feasible way of working the quasi-federal union between the Empire and sister nations like Canada and Australia. A quarter of a century past I dreamed the dream of Imperial Parliamentary federation ; but many years ago I came to the conclusion that we had passed the turning that could lead to that terminus, if ever, indeed, there was a practicable road. We have too long and too extensively gone on the lines of separate action here and elsewhere to go back now. Never forget—you have the lesson here to-day—that the good will on which you must depend is due to local freedom, and would not survive its

limitation. Never forget what has passed in the course of this brief controversy. It is another evidence that the real link is good will, and that the root and foundation of that goodwill is the local freedom which you give so freely everywhere except in one small part of the Empire. I do not think Pan-Imperial Parliamentary federation is within the bounds of possibility. And this conviction it was which made it impossible for me, with every sympathy, to join in the efforts of the late Imperial Federation Leagues. I do not in the least degree think this Bill is a step towards Imperial Parliamentary federation. On the contrary, I believe it is distinctly a step the other way. Because the greater the power, the larger the success, the higher the ambition of united Australia, the less the likelihood of her surrendering to a Parliament sitting on the other side of the globe, in which her representation would now be scanty, the powers you give to her to wield at home. That great problem of finally reconciling the national aspirations, as they may develop, of these distant communities with British connection, the great problem of reorganisation remains inscrutable. Let us maintain, at any rate, the essential element of good will. I believe the condition to be not as the Colonial Secretary said in his speech on the First Reading. I do not believe, as he said, that the links that bind you to your colonies are slight and slender. I do not believe, as he said, that they could be snapped by a touch. I believe them to be strong and real. But I believe them to be absolutely impalpable, not founded on costly appeals, not on your clauses of reservation, not on your powers of disallowance, and not on the paramount legislative power of this Parliament. I am not complaining of these things. But they are not the real links that bind the whole. You frankly agree that if the great colonies say "Let go," you will let go. Thus your coercive powers, useful in their little measure, are useless here. What, then, are these impalpable links on which alone you can depend ? I warn you once again, from the deepest conviction of my soul, that while these links are strong and real, they are links of good will, founded on local freedoms. That this is so is exemplified to-day in the concessions you have freely made to the principle of nationality, the principle of self-government and of local

freedom, which will enable this people, under the ægis of the Empire, to go their own way according to their own view in all those matters which concern their own interests. Let us then guard that essential element. Let us deal as best we can with the problems of the hour, taking care above all things to keep a free hand for those of the future; for grave problems there are which certainly loom before us. Let us give a warm welcome to the Australian Commonwealth, and hope its glorious fate may be to set

"The bounds of freedom wider yet," and that West Australia now, and distant New Zealand later, may find adequate common ground to justify their accession to the Union. May I repeat as a last word the hope that the day may come when the eyes of Her Majesty's Government will be opened, and they may see fit to apply at home the principles which have ruled their treatment of Australia to-day.

MR. BRYCE (Aberdeen, S.): The statement made by the Colonial Secretary has relieved some among us of the necessity of offering remarks which would have been in order had the Bill remained in the form in which it was introduced. There are very few words that I intend to say, and they will certainly not be of a controversial character. May I recall to Members of the House what passed when, in 1885, this House considered the Bill which established a Federal Council for Australasia? There were many of us then who were impressed with the narrowness of the scheme laid before the House for the joint action of the Australasian colonies, and seeing how narrow was that scheme, and how little prospect, apparently, that the colonies of Australia should be brought together with larger powers under a common body, we scarcely hoped that we should live to see so great an advance, and that now in 1900 the House should be asked to pass the Second Reading of a Bill for uniting those colonies in a great federal community. It is a great event and a great work. Very rarely in history are such constitutions framed, and those who know with what interest and sympathy and curiosity countries living under a written constitution, like the United States, look back upon the days and the men by whom that constitution was framed, may form some conception of the

interest with which generations to come will look back to the circumstances which surround us, and the negotiations that have been proceeding recently, to the Australian conventions and votes of the past nine years, and to the Parliamentary proceedings on this Bill to-day. It is, I believe, the only occasion in history on which an instrument of government had been framed which is intended to operate for a whole continent. I hope that one may be permitted to say that even to the British Parliament, with its long and famous record, it is a new honour to be invoked for such a purpose and to exercise its power in passing an enactment like this. This Federal constitution has been made with much difficulty and after long delay. Nine years have been spent in debates, and in the course of these debates many occasions have arisen when the difficulties seemed almost overwhelming, but the perseverance, the hopefulness, the public spirit, and the patriotism of the statesmen of Australia have overcome all those difficulties, and they have come to us with an instrument which, I believe, will be of the highest possible interest to the students of all constitutions, because it has many elements of novelty. It is based upon the lines of our British Constitution. It embodies its most ancient and valuable principles, it proposes to carry out a system of responsible Cabinet Government, and yet at the same time it has borrowed many features from the constitution of the United States. It has taken from it and from the constitution of Switzerland the federal principle, and it has adopted, unlike the constitution of Canada, the principle of delegating the powers of the central authority and reserving the powers of the local Parliaments. In these respects it is a unique creation, and I am persuaded that the students and the statesmen of all civilised countries will watch with the greatest curiosity and interest the progress of government under this new constitution. May I add one or two words on the general subject? The progress of the negotiations and the debates which have led to the enactment of this constitution have coincided with the constant growth of the belief in the colonies themselves that it will tend to strengthen the ties that bind them to the mother country. When the project was first mooted I well remember that there were some who said: "This is the beginning

of the end. Australia desires to be a nation, and when she is a nation she will have little need of the mother country." These ideas have been singularly falsified by the result, because, I believe, every year these debates have gone on has strengthened the feeling in Australia, which has now happily spread to ourselves, that the ties can be closer, and the co-operation can be better between the mother country and a united Australia than with an Australia composed of diverse and unconnected colonies. There is also another thing we ought not altogether to forget, and that is how much we owe, in the drawing closer of the ties between the Australian colonies and ourselves, to the fact that our institutions are monarchical. The prolongation, by the blessing of God, of the life of our present sovereign, the reverence and affection for her entertained alike in all parts of the Empire, have been a very powerful influence in drawing all parts of the Empire together. That is all the more reason why nothing should come in to mar the harmony of the proceedings when enacting this constitution, and I am bound to say it was with the greatest feeling of relief and satisfaction on this side of the House, as has been so well said by my right hon. friend, that we heard the statement made by the Colonial Secretary. I do not for a moment deny that Her Majesty's Government had an absolute right to scrutinise most closely the propositions laid before them by the Australian colonies. As trustees for the Empire it was their duty to examine any proposition affecting the Empire as a whole. That duty was just as clear as is the legal right of Parliament to enact that which commends itself to the judgment of Parliament. But considering that this constitution had had not only the approval of the Australian conventions, but had had the solemn sanction of a popular vote taken in five colonies, incomparably more important than any private and unauthorised opinions which could possibly be collected from the colonies, such as those that were put forward by the Colonial Secretary last Monday, I think it is immensely to be desired that we should not vary in any way from the substance of what that popular vote has approved, and I am happy to think that the Bill in the form in which it is passed by this House will in substance, if not in the very letter, carry out what the popular vote in Australia has

approved. As far as I can follow the effect of the amendments read by the Colonial Secretary, I agree with them. They do not really differ from what the Bill, as approved by the Australian people, contained; and that is why we on this side of the House are satisfied with them. We have argued that the Australians should obtain what they asked for, and the Government have now conceded it. I venture to say for my own part, speaking with the greatest possible deference, I somewhat regret the final decision, arrived at by a majority of twenty-one to eighteen, in the Convention, by which one class of constitutional questions were declared not to be appealable to the Privy Council. I was one of those who thought it would on the whole have been better if the absolute and complete right of appeal to the Privy Council from the High Court of the Commonwealth upon all constitutional questions had been left subsisting. I quite admit that there is much to be said on both sides of this question. One of those very interesting and thoughtful memoranda submitted by the Australian delegates argues that the difficulties arising on the working of local constitutional laws can be better determined by a court in Australia familiar with the needs of the country than they could possibly be by any court sitting here in England, 10,000 miles away, and not conversant with the motives which had led to the enactment of a law, or the reasons which had suggested the executive acts whose constitutionality might be called in question. I do not for a moment mean to deny that there is great force in that argument. Perhaps it was an argument not easily appreciated by us in this country because we are not accustomed to have the construction of our statutes reviewed in this way by Courts of law. But it may be observed that in the United States matters have frequently arisen which indicate and illustrate the force there may sometimes be in the argument advanced by the Australian delegates. Cases sometimes arise in which the words of a Constitution are so vague or difficult to apply that it becomes necessary to have regard to what may be called the general spirit of an instrument, and to the policy which is most likely to keep it in harmony with the needs of the time and to promote the welfare of the community. Thus where it has been doubtful whether some particular statute was in consonance

with the State Constitution or the Federal Constitution (as the case might be), it became necessary for the Courts to give a decision on points not expressly covered by the language of the Constitution itself, and for the purpose of such a decision to examine and weigh the causes which led to the enactment of the statute and the evil it was meant to remedy. Such cases must always be expected as possible under the construction of any constitution, and we may be quite sure that under the construction of this Australian constitution cases of that kind will arise. If any case of the kind arises, it is quite true, as the Australian delegates have argued, that a Court upon the spot which is in possession of the views that led to the enactment of the law, which knows the circumstances and understands what are the evils that the law was meant to meet, is in a better position for giving a liberal and practically useful construction to the provisions of the constitution, and for applying the spirit of these provisions to the questions raised by the law, than is possible for a Court which does not know these local circumstances. There was one very remarkable group of cases which arose in the United States some years ago—the cases which would be known to lawyers as the *Granger* cases—in which questions arose as to the validity of certain legislation, in regard to which there was really very little in the constitution to enlighten the Courts, and in which the Courts took a very large and liberal construction of the powers of the Legislature, and so averted difficulties and struggles which would otherwise have arisen—a course which, I think, the general opinion of the profession there and of the community subsequently approved, and yet which it must be admitted might have been decided in the opposite sense by a Court which had no knowledge of the local conditions, and which was anxious to adhere very closely to doctrines that had been laid down in earlier decisions, rendered before the problems involved had been fully considered. That seems to me to be an illustration of the worth and importance of local knowledge for the purpose of interpretation, and I have adduced it to show how much weight there is in the view which the Australian delegates have put forward. But, on the other hand, we have the important fact to bear in mind that it is eminently desirable to keep

courts of justice out of all questions of a partisan character, to prevent their decisions being even suspected of political bias, to secure for them that respect and deference which can be secured only when there is a certainty that no political motive can affect their judgment, and to prevent the suspicion that the appointing authority, which, of course, must be the Ministry of the day, could be actuated in any way in its choice of persons to be placed on the Bench by any considerations of their political views or of the sort of decision they are likely to give in a question in which political motives might enter. Bearing that in mind—which, after all, is a consideration of the highest moment—most of us in this House will conceive that, on a balance of arguments, it would be better to let Australian Constitutional questions be settled by an Imperial tribunal removed from all local proclivities, and will feel that if we had sat in the last Australian Convention we should have been found amongst the eighteen who voted to reserve the appeal to the Privy Council in all cases whatsoever. I have ventured to refer to this point for the sake of expressing the hope that when the whole matter comes to be fully considered in Australia by its Commonwealth Parliament there will be a feeling that, even in the purely Australian cases which, under the amendment indicated by the Colonial Secretary, are to be left to the High Court, it may often be in the interests of Australia herself that an appeal should lie to the Privy Council. If I understood properly the words read out by the Colonial Secretary they mean this, that, while the final decision upon constitutional questions would remain with the High Court of the Australian Commonwealth in cases where only Australian interests were involved, there would be a power, even in those cases, to let these appeals come to the Privy Council in England. Did I understand that correctly?

MR. J. CHAMBERLAIN: By the consent of both parties

MR. BRYCE: That is to say, that when both parties consent, these appeals may still, under the amendment proposed to be introduced, come home to the court in England for adjudication. I welcome those words, although the instances in which the provision will be

used may not be frequent. In cases where it is felt that the peculiar gravity of the question or the fact that it may be complicated with political issues makes it desirable to have an adjudication from an absolutely impartial and unconnected body—I ought not, perhaps, to use the word “impartial,” because I do not want to suggest that an Australian Court would not be impartial, but a body which cannot be even suspected of political partiality—it is very desirable that this possibility of sending constitutional appeals, even such as are purely Australian in their issues, to the Court of England should be preserved. I echo the hope that the Imperial Parliament should proceed with the creation of a Court which may be fitted, in some respects even better fitted than is the Judicial Committee of the Privy Council, to inspire confidence in our colonies and India, a Court whose composition and external dignity may be found even more worthy of the functions it is called upon to discharge than the Judicial Committee has been, though I am bound to say that for many years past, indeed ever since the days of Lord Kingsdown, the Privy Council has, by its diligence, its learning, and its acumen, placed the colonies and India under the greatest obligations. If there be any Members in the House who, still disquieted at the idea that questions affecting the interests of other parts of the British Empire may be left to be finally decided by an Australian Court, let me remind them that wherever there arises a doubt as to whether or no those interests are touched, that doubt will be resolved by the action of the Imperial tribunal, the Privy Council. The party which alleges that the question does affect extra-Australian interests will be entitled to argue this preliminary point before the Privy Council, and if they decide in his favour the appeal will lie, and that Imperial tribunal will deal with the issue it raises. Therefore we may feel the amplest confidence that there will exist a complete protection for the interests of any other part of the Empire under the provision which it is the intention of the Government to insert, a provision which was all along contained in the Australian scheme, though in words not quite so explicit. One word more I will venture to say with regard to the question of the competence of an Australian Court. Although I do not suppose

that the Government have been actuated by any distrust either of Australia or of the Australian Judges, there is a parallel between the case of Australia now and that of the United States a century ago which deserves to be recalled because it may re-assure those who imagine colonial tribunals to be necessarily inferior to our own. Australia has now a population of nearly 4,000,000. When the Supreme Court of the United States entered upon its functions at the end of the last century, and when in particular Chief Justice Jay was succeeded in 1800 by the great Chief Justice Marshall, one of the first constitutional jurists of modern times, or indeed of any times, the population of the United States was almost exactly the same as the population of the Australian colonies now. Yet it was found possible from that population of 4,000,000 to secure a Court which was in every way worthy of the momentous functions that devolved upon it, and which from that time until now has succeeded in giving the fullest satisfaction, so far at least as learning and ability and purity are concerned, to the people of the American Republic. Why should we not hope that the Australian population, of our own blood, and trained under our own traditions, should be capable of furnishing Judges for the Federal High Court of Australia who will be equal in their capacity and in the spirit which will animate them to those whom America was able to find with a population no larger a century ago? I have nothing further to add except to express once more the warm satisfaction which we feel that the difficulties which seemed to threaten the harmony of our proceedings have been removed by an admission of the reasonableness of the Australian demand. I believe that the creation of this Federation in Australia will facilitate co-operation between that great group of colonies and ourselves in all political questions—and there are not a few political questions affecting the Pacific in which Australia, equally with ourselves, is interested—and I join in the hope which has been expressed by everyone who has spoken in this debate, and by none more eloquently than my hon. friend who last addressed the House, that the creation of the new Commonwealth, and the welcome which has been given in this country to its establishment under a federal scheme, will strengthen the ties which unite our

Australian kinsfolk to ourselves. The unity of the British race over the world, that unity which makes us here and in the colonies one people in many States, is, however, based upon something deeper and more enduring than any political arrangements. It rests on the foundations not only of a common interest in the defence of our Empire and of all that the Empire secures for us, but also upon community of ideas, of habits, of institutions and traditions, and on the pride which we all take in the long and glorious history which we share with the Englishmen of Australia and of Canada. This constitution is a product of that history, and witnesses to the vitality of the principles by which England had begun to be guided as far back as the days of Magna Charta.

MR. EVELYN CECIL (Hertfordshire, Hertford): I should like to say a very few words in praise of the tact, friendliness and insight with which the Colonial Secretary has carried out these negotiations, and of the reciprocal goodwill with which the suggestion of Her Majesty's Government has been received by the Australian delegates. The Bill is one of the highest importance, and I think we recognise our position in regard to it by abstaining from criticising greatly or even at all the provisions in which Australia alone is concerned. There are questions involved which might perhaps very well afford some ground for friendly criticism. I notice, for instance, that in Clause 47 it is suggested that disputed elections are to be determined by the House in which the question arises. We have had considerable experience in times past in regard to the deciding of disputed elections. From the days when the House itself, and afterwards its delegated Committees, endeavoured always by a party vote to settle disputed elections to the time in 1868 when we found it necessary to transfer that power to the Judges of the Queen's Bench—all that period of history has taught us that it is not very wise to give to Houses of Parliament the right of deciding disputed elections. That, however, is a matter which concerns Australia and does not concern us. All that concerns us is such a question as the appeal, which, no doubt, is a matter that every trustee of the Imperial interests ought carefully to look into. As regards that I feel we ought to give

our cordial support to the Government which has jealously looked into the matter of the right of appeal and arrived at a successful compromise. I did not quite gather whether it is intended in that new amendment now proposed by which appeals are always to lie to the Queen in Council, except when Australian interests only are concerned, that the Privy Council is to be the body which is to decide whether or not only Australian interests are concerned. That is a point of some importance which I feel sure will be agreed upon and settled in as friendly and satisfactory a spirit as has been shown in all the negotiations of the past, but upon which I hope we shall have a clear explanation before the debate is concluded. As a result of the recent negotiations we shall have an alteration of the appeal clause. That alteration is one which might be required in the future to apply to other colonies than Australia, and if we frame the amended clause in a particular form it may be that South Africa and Canada will also ask to be granted similar privileges in like cases. I trust that that will be borne in mind in coming to any compromise in regard to this matter, but I have no doubt, in view of what has already passed between the Colonial Secretary and the Australian delegates, that this point, like others, will be met in a spirit of friendship and compromise. We cannot too strongly insist upon the importance of upholding the Supreme Court of Appeal for the whole Empire. It maintains the scales of justice between the various portions of the Empire; it has the important advantage that it is free from local influences; and in my humble opinion it is one of the chief links which bind together the different portions of the Empire—a link which I should be very sorry to see broken. In view of the speech of the right hon. Gentleman the Colonial Secretary to-day, I do not think he can possibly be accused with any show of commonsense of having wished to flout or to give a rebuff to Australia. That is a contemptible accusation, and one which we feel keenly in the Unionist ranks. The right hon. Gentleman's past—not only his speech of to-day, or his speech of last Monday, but his reception of the Colonial delegates at the time of the Queen's Jubilee in 1897—has shown how much he has the interests of the colonies in his thoughts, and how much he desires

to strengthen the links which bind them and us. It is far from a question of rebuff. If we did not offer any intelligent criticism on such an important Bill as this we should not be doing our duty. Criticism is intended as a compliment, not as a rebuff, and we all have criticised entirely in that spirit. I trust that this Bill, through the management of the right hon. Gentleman the Colonial Secretary and Her Majesty's Government, will be the means of setting on a firmer foundation the good relations which already exist between ourselves and Australia, that those relations will long continue, and result in the pushing forward of that great cause of Imperial Federation which both the Australians and ourselves alike have so much at heart.

MR. S. T. EVANS (Glamorganshire, Mid): The termination of the controversy between the Colonial Office and the delegates from Australia, which has been announced to the House by the Colonial Secretary, brought a feeling not only of gratification but of great relief to this side of the House, because we were greatly afraid that the negotiations which were being carried on were such as to cause friction in Australia and to make it very difficult for us to give graciously that which we ought to give graciously if we give it at all. We on this side of the House have always been ready and willing to give to Australia what Australia demanded in this matter, because we recognise that Australia, moving entirely in allegiance to England and from feelings of devotion to England as well as to her own people, desired to have a federation of the Australian colonies. And when we knew, as we did, of the great work which had been done in Australia for very many years by its statesmen and people, by full and free discussion, by conventions, by two separate and distinct referendums, we were very much afraid at one time that it was possible that such a degree of friction might be created between Australia and the Colonial Office that the federation of the Australian Colonies would have been, at any rate, for the time imperilled. Fortunately that time is over. We gladly recognise the ability of the Colonial Secretary, and I quite as gladly recognise that the right hon. Gentleman is able to give in when he knows he ought to give

in. That spirit which the Colonial Secretary has shown upon this occasion by acquiescing, and properly acquiescing, in the demand made by the delegates from Australia is a spirit which perhaps might have been extended in other negotiations to which it is possible to refer. There never was any question at all of limiting any existing right of appeal from the State Courts. There was a demand made by Australia that she should be allowed to limit further the right of appeal from the new High Court. The real, solid, and only question at issue between the Colonies and the Colonial Office finally was, whether or not Australia was to be allowed in her own courts to decide matters of internal constitutional law. That matter has at last been conceded to Australia, and we are all very rejoiced at the fact. The Amendment which I placed upon the Paper was conceived entirely in the spirit of the result of the negotiations. Our desire was, when it had been clearly shown, after the fullest discussion and all possible care, what was the will of the Australian people, that that should be considered and met. Australia now, or, at any rate, those portions which have contracted to come within the scope of the Bill, will have a Constitution which we on this side of the House would be very rejoiced to have in this country. The Constitution is the same in Australia as in England in that the Queen is at the head, but there are other matters now conceded to Australia which we on this side of the House would be very glad to see conceded nearer home, and we readily thank hon. Members opposite who have done their very utmost to prevent these reforms being granted to other portions of the Queen's dominions, for being willing to give them to Australia, which is at the very antipodes. Australia is now starting with a Constitution under which she will have triennial Parliaments, one man one vote, payment of members, and direct elections to the second chamber, and a Constitution under which the second chamber will not be able in the long run or permanently to defeat the wishes of the people as expressed in the Lower House. We gladly give credit to hon. Members opposite for showing their wisdom in agreeing to concede these rights to Australia, although they are not willing to extend that wisdom to other portions of the

Empire. Western Australia and New Zealand have not yet agreed to come into the federation, but I hope that both those colonies will in the very near future join the federation of Australia, which is hailed by everybody in this country as being the greatest thing which could happen to that continent. Even as late as to-day, I believe, Western Australia and New Zealand have telegraphed to the Colonial Secretary that they still adhere to their opinions with regard to Clause 74, but when they hear that the Government have given way to the delegates on this matter, I think they also will see that their true wisdom is in accepting federation, and giving the fullest power and freedom to the people of Australia to work out their own political salvation. Under the circumstances, it will be entirely unnecessary for me to move the Amendment which I had placed upon the Paper.

THE ATTORNEY GENERAL (Sir ROBERT FINLAY, Inverness Burghs): Almost every speaker to-night has expressed gratification at the tone which has characterised this debate. It is a tone which has given unmitigated satisfaction in every part of the House, and I think I may say that not a single jarring note has been struck. I desire to express in the fullest manner my appreciation of the way in which the right hon. Gentleman the Member for East Fife opened the debate on the part of the other side of the House. I am sure that everyone feels that there are subjects which far transcend all the interests of party, and on which both sides of the House are thoroughly in agreement. This debate, if that is the proper word to apply to it, has not only given satisfaction to the House, but it will give satisfaction throughout the whole of the Empire and to the friends of the British Empire in every part of the world. I think events have vindicated the wisdom of the course that was taken by my right hon. friend the Colonial Secretary in not intervening in the earlier stages of these negotiations. It was suggested, in a not unfriendly spirit, that by interfering some years ago even the possibility of a divergence of views might have been avoided. I would only remind friendly critics who expressed that view that nothing could be more difficult and delicate than to intervene at an early

stage of the negotiations that were being carried on in Australia upon points of this description. The happy result at which we have now arrived seems to show that, whatever other course might have been possible, the right course has been taken throughout. I find myself in agreement with a great deal that has been said by my right hon. friend the Member for South Aberdeen as to the necessity for a Court of undoubted authority to interpret the constitutional power to make certain laws. He truly says that in this country we are not familiar with such functions on the part of the Courts of Justice; that our Courts are concerned almost entirely in the interpretation of laws when made, and are not concerned with the authority of the body which has made them. But as he pointed out, under the American Constitution, and as has been seen in regard to other parts of the British Empire, questions are certain to arise with regard to the authority of legislative bodies to pass certain laws, and I recognise in the amplest terms the necessity of having a Court of supreme authority and influence for the determination of such momentous questions. The principle which has guided the conclusion that has been happily so far arrived at is this. All that concerns Australia alone, if the Australians desire it, will be decided in their own High Court. What concerns other parts of the Queen's dominions, or the British Empire as a whole, will be subject to an appeal to an Imperial Court. It will be obvious to the House that the question of the delegation of powers may be a matter of Imperial concern. It may be of the utmost moment to the Empire to know whether or not a certain power has been delegated to the Colonial Legislature. On the other hand the question as to how such powers are to be distributed as between the general Legislature of the Central Government of the Australian Dominion of the Queen and the Legislative Governments of the States is a matter which concerns Australia. The extent of the delegation may be an Imperial interest, but the question of distribution must necessarily be an Australian interest only. With regard to the question of distribution, the question as to the limits of the powers of the Commonwealth and States *inter se*, questions of the limits of the powers of the Legislative Governments of the States as between themselves—even on

these questions there may be a great desire, under certain circumstances, to appeal to the Privy Council. Her Majesty's Government have found it their duty to safeguard and secure the possibility of a right of appeal to an Imperial tribunal in every case where the interests of the Empire hold, or the interests of Her Majesty's subjects in any other part of the dominion are affected. It is a matter for congratulation that the course of events has resulted in the discussion to which we have just listened.

MR. WILLIAM REDMOND (Clare, E.): After what has taken place, and especially after the speech of the hon. Gentleman the Member for South Longford, I should not have felt justified in intervening for even a very few moments but for the fact that I have taken an exceptional interest in matters connected with Australia in view of the fact that I have been there and I have a good many friends there. The right hon. Gentleman the Member for South Aberdeen said very truly that occasions such as these in the life of a nation like Australia will be in future of great interest. In generations to come the people of Australia will look back to this day as marking a great advance in their national existence. That being so, I would like to have it said of the Irish people that they had the satisfaction of being able to point to the fact that whatever little assistance their representatives in Parliament could give to the development of the continent of Australia was freely given in this House. With regard to what the right hon. Gentleman the Colonial Secretary said, I only desire to make one or two observations. He pointed out quite truly that the representatives of four of the States and the Government of Western Australia had taken a different view in the controversy which is now happily closed. In this controversy Queensland and Western Australia have backed up the view of the Colonial Office and of Her Majesty's Government. But in connection with this matter I think it should be borne in mind that all through this Australian Federation movement the colony of Queensland has undoubtedly acted as a sort of deterrent and a brake. All through this agitation the colony of Queensland held back, and it is not going too far to say that if the colony of Queensland had had its way the question

of federation would never have been in its present position, and we should never have been able to pass unanimously—as I am sure we shall do—this great measure of the Commonwealth of Australia. With regard to Western Australia there is this much I will say—and I believe it will be approved by a great many hon. Members in this House and out of it, and in Australia as well. Whether Western Australia ultimately enters into this federation or not, I think it is the duty of the Colonial Office and of the other Australian colonies to see that Western Australia puts her own house in order and extends to her own citizens within her own borders a broader system of enfranchisement, which will give proper representation to all the people in the colony. At the present time we hear of the grievances of the Uitlanders in South Africa and the Transvaal; but there are thousands of British subjects in Western Australia who are more completely deprived of the franchise and representation than the British subjects ever were in the Transvaal. In the gold districts of Western Australia the representation of the people is a mockery and a farce, and if I were an Australian connected with any other colony and having any influence in this matter, after Western Australia has hung back so long, I would make it a condition upon the entry of this small colony into the Government Federation that she should, by a proper measure of representation, do away with an undoubted scandal which exists at the present time, and give full and fair representation such as other colonies do to the whole of the people within her borders. I will say no more than this. A great portion of the people of Australia are of Irish blood, and upon this occasion I think an Irish Member like myself cannot be found fault with if I remind this House and the people of this country who are all interested in Australia at the present time, that a great deal of the present proud position of Australia is attributable to the genius, the talent, and the industry and labour in every walk and position of life of the Irish in that country. And I must say that it is a sad reflection to Irish Members, anxious upon this occasion to do everything they can to forward freedom in a great new country, to think that exactly one hundred years ago this Parliament was engaged in destroying the ancient

Parliament of Ireland. And now one hundred years afterwards you are giving a great nation beyond the seas what you have deprived us of. It is certainly a strange and a sad thing to some extent to an Irish Member to witness here with what cordial readiness the Colonial Secretary and his colleagues accede to the wishes of the majority of the Australian people in almost every possible respect. He tells us that two of the colonies hold one view, but the delegates of the other colonies hold a separate view, but at once the opinion of the representatives of the four colonies is allowed to prevail, and the opinion of the two colonies is put upon one side. Here in this House there are eighty Irish Members holding one view, and that view is discarded, and our country is governed not in accordance with the views of the majority, but in accordance with the views of the minority. There will be no class of people throughout the length and breadth of Australia who will feel more pride and gratification when they read that this Bill has been unanimously passed than the Irish section of Australia. The Irish section of the Australian people, I venture to say, are as loyal and contented, and as much respected, as any other section of people throughout the length and breadth of Australia. But why are they contented? Why will they be proud and grateful when they read of the passage of this measure? Why are they satisfied and why are they loyal? Because they enjoy those things which Parliament has given them—those measures of freedom which you deny to the Irish people at home. When you see on occasions like this Irish Nationalists and Irish Catholics in Australia loyal and contented, and living in cordial brotherhood with their fellow countrymen of other religions—when you see that spectacle, ought it not to induce you to try with the same methods to bring about those happy results in Ireland which make Englishmen, Scotchmen, Irishmen, Protestants and Catholics live in harmony and goodwill together in Australia? The hon. Gentleman the Member for Mid Glamorgan-shire said there were many things in this Australian Constitution Bill which we would be glad to have here at home. There is one portion in particular which might be applied in that direction, and that is the portion of the Bill in which you lay down that there should be no Church

establishment in Australia, and that there should be no possible disability upon religious grounds in any sense in Australia. If it were for nothing more than that I would cordially support this Australian Bill. Surely, it is an anomalous state of affairs that we, this afternoon, should pass a Bill laying down that religion shall be no bar of any kind throughout the length and breadth of Australia, while in Ireland and in this country, to some extent, religion is a bar and obstacle to promotion and other things. Under this Bill the governor or the chief ruler of the Australian colonies may belong to any religion, but in Ireland we have the stigma upon us that the chief governor, the Viceroy, must be of one particular religion and may not belong to the ancient faith of the great bulk of the Irish nation. We Irishmen cordially support this Bill, and it is with some degree of envy that we give our poor assistance to our countrymen beyond the ocean in supporting this measure of justice and freedom which we want so badly at home. I hope that in years to come, when this great historical occasion is recorded, future generations of this great historical nation may derive some satisfaction from the fact that the representatives of Ireland gave everything they could in the way of freedom and liberty to their countrymen beyond the ocean. In conclusion, I cannot refrain from saying that the one drawback on this occasion, the one thing which to my mind mars the greatness of this Act in setting up a great and a new free Parliament in Australia, lies in the fact that while the right hon. Gentleman the Colonial Secretary is giving freedom with a free hand to the Australian people, while he is giving them freely a great central Parliament, at the same time he is spoiling and marring that great work of liberty by endeavouring by force and by cruelty to destroy the free Parliaments of people who are as much entitled to freedom as any section of the British people.

MR. T. M. HEALY (Louth, N.): I and other Irish Members seem to-night like penniless beggars, enabled suddenly to give away large estates abroad. I marvel at the terms of this Bill. Why is it that the right hon. Gentleman the Colonial Secretary, his private secretary, and all his friends who took so large a part in endeavouring to defeat the Home Rule

Bill, do not think it necessary upon this occasion to move any of the Amendments which they considered were so absolutely vital seven years ago? I have had the curiosity to take up this volume of Amendments they moved against the Irish Home Rule Bill of 1893 [*holding up a large book*]. This is only one of them, but there are seven more outside full of Amendments which the right hon. Gentleman the Colonial Secretary along with his friends moved to that measure seven years ago. I have reckoned up the number of times he spoke as nearly as I can during that brief period. I examined the index to *Hansard*, and I calculate that against the Home Rule Bill the right hon. Gentleman spoke nearly 300 times. Is it therefore not a most astonishing thing that the right hon. Gentleman does not find it necessary now to move any Amendments to this Australian Bill, prepared at the Antipodes by beginners in statecraft, when he so distrusted the proposals of a veteran British statesman, so lately his leader? If it was absolutely vital and essential then that the right hon. Gentleman should lay down all these safeguards in regard to setting up a subordinate Parliament in Ireland, why is it that now, when he has supreme power in the matter of this Parliament of Australia, he does not attempt, in any single degree, to give us the benefit of the great knowledge which he then displayed? I look at these 1893 Amendments, what do they demand? The first thing which it was then stated by the right hon. Gentleman was absolutely necessary in passing any measure granting a subordinate Parliament was that you should assert the supremacy of the Imperial Parliament. But where is the assertion of the supremacy of the Imperial Parliament in this Bill? For over a week upon that occasion we were engaged in opposition to the tremendous eloquence of the right hon. Gentleman in struggling to show that, after all, the unhappy Irish might be trusted in small matters; but now it appears that an Irishman cannot be trusted with Home Rule unless he has first been transported. By some extraordinary means the moment you send an Irishman 10,000 miles away, that moment he becomes entitled to be equipped with all the liberties which a very large measure of self-government can give to him. I do trust

that, as the right hon. Gentleman has changed his opinions so much on the question of yielding to Australia, we may be encouraged in the hope that on some future occasion we shall have the right hon. Gentleman coming forward and saying that all those safeguards which he found so necessary to propose in the case of Ireland were mere figments of the imagination, and that he will see that what he is now giving to Irishmen 10,000 miles away from the central Imperial authority he may safely give to Irishmen when they are only separated from the Imperial authority by some sixty or seventy miles of salt water. In regard to the Amendments he has now proposed we must say, at all events, that they are *bond fide*. We can see that the heart of the right hon. Gentleman is in them. He believes that he is acting as the trustee and custodian of the Empire and as a patriotic Englishman, and however much we may think he was mistaken no one can deny that he is absolutely sincere in his view as to this question of appeal. The right hon. Gentleman has done a great work, and he has put, I think, into his work a great deal of that genius which undoubtedly he has shown in the management of these affairs. If that be so on the present occasion, what are we to think of this miserable bundle of old Amendments to the Bill of 1893? Even the Irish Secretary proposed then that the Irish Parliament should not have a right to give a salary to its members, but in this Bill the Government propose that the members of the Australian Parliament should have £400 a year. These Amendments proposed seven years ago imposed restriction upon an Irish Parliament to prevent payment of members, the giving of any Irish titles and dignities, dealing with the criminal law, the law relating to intimidation, the regulation of trade and commerce, the regulation of flags and colours for merchant vessels, bounties to Irish industries, and we were not to be allowed to deal with the laws of marriage and divorce and many other matters. Even it was proposed we should be forbidden to deal with telephones. What a noble work that was for the right hon. Gentleman in this mother of Parliaments with all these Colonial Parliaments surrounding him, with Parliaments in the Isle of Man and the Channel Islands, not to speak of

Parliaments abroad, to show such distrust of Ireland, while now the right hon. Gentleman, without the smallest reference to the debates in which he was then engaged, gives to these colonies this great blessing! I congratulate the right hon. Gentleman upon giving these colonies these immense powers of sovereignty, which we believe will result so beneficially to Australia and will redound to the benefit of the Empire at large. However, I did not rise to make a speech upon this question, but merely for the purpose of asking a question. I understood from the First Lord of the Treasury and from the right hon. Gentleman himself that this occasion would be availed of for the purpose of explaining the position with regard to the final Court of Appeal. I am very glad to hear that a compromise has been arrived at, and I do not think that the right hon. Gentleman is to be attacked for the attitude he has taken up, nor do I agree with the criticism which has been passed upon him that he should have entered into this dispute at an earlier stage. I think he has taken up a reasonable line by submitting his proposals to the Australian delegates, and they together have come to a conclusion which this House can ratify. But the greater the importance which attaches to this question of an Appeal Court the greater is the necessity of fully explaining it to the House. If it be essential to set up this Court of Appeal for the consideration of Australian or international difficulties, why are we not told exactly what the nature and the duties of that Court are to be? We observed on Friday last some slight conflict between the views of the First Lord of the Treasury and the views expressed by the right hon. Gentleman the Colonial Secretary. I gathered from the speech of the First Lord of the Treasury that this Court of Appeal would not be a Court consisting of the present House of Lords, but would consist of the Privy Council. If that be the case, why is any change in the *personnel* of the Appeal Court necessary? What is the necessity for making these Australian, African, Indian, and Canadian gentlemen, colonial lords of the realm on a seven years lease? The reason we are interested in this, if this is to be a final Court of Appeal for the Empire it must be a final Court of Appeal for Ireland; and whatever you do for Australia, Canada, and other places, you are not merely doing

for them alone, but for every county of Ireland and England, just as much as for the new States of Australia itself. If an Australian peer is to be brought over here and given a salary of £6,000 a year, I want to know why is the impoverished peasant of Mayo and Connaught to maintain that gentleman and his peerage in London. I object to it altogether. If the Australian people desire to have peers of the realm then let them pay for them. I do not think that that statement is in the least degree offensive to Australia, for I am sure that if you do not provide this bounty on Australian peers out of our pockets Australia will not export any of these curiosities. Having at times read the views expressed in Australian newspapers, I should hardly think that the opinion of the Australian people is one of extreme reverence or respect for peers of the realm, for I have seen some rather caustic criticisms on Australian Ministers who have gone back with a knighthood or a baronetcy. Therefore, I contend that the line Irish Members take up is a fair one. We are also entitled to know, if this Court be created, why English, Scotch, and Irish appeals should lie within the cognisance of these antipodean noblemen? No doubt if they are properly robed they will present a most interesting and formidable appearance, but it is somewhat capsizing to my intellect to suggest that you will obtain in the new judiciary thus constituted that reverence which attaches in many minds to the ancient judicature of the House of Lords. The British Constitution has grown; it has not been patched, tinkered with, and cobbled. In 1874 and 1876 the Irish Members stood out for the ancient constitution of the House of Lords as a final Court of Appeal, because it was guaranteed by the Act of Union. I think, therefore, it is too much to suggest now that this new and hybrid Court will have either support or reverence from any section of the people of these countries. I protest, then, against this piebald peerage system which the right hon. Gentleman has associated with this Bill. I should be greatly surprised if, when his second Bill is introduced, whether here or in another place, the right hon. Gentleman will have any support to his proposal, for I rather think that, suspect as the right hon. Gentleman is by many of the ancient Conserva-

tive party in reference to the Peerage, they will regard this as a further undermining proposition, the real object of which is not to establish a Court of Appeal for the Empire, but to discredit the House of Lords. They will think that, as in the botanical world there are what are called "sports," so in his case there has been a reverter to "type," and that in his mature years the right hon. Gentleman has had a recrudescence of his Radical days. I say, therefore, we are entitled to some more reasonable explanation of this extraordinary court which it is proposed to set up. As the right hon. Gentleman has so happily come to a conclusion with the Australian delegates, and no one rejoices at it more than I do, he should now let this new-fangled tribunal rest. This macaronic House of Lords' proposal grew out of the difficulties he at first was placed in, by insisting on a general power of appeal from Australia. That has been found to be untenable. It is no longer necessary therefore to pursue his consequent innovations, and even though Chief Justice Way is entitled to great consideration, and although he has rendered the right hon. Gentleman important service, I trust that the strange apparition of these Australian peers will not be allowed to threaten an ancient constitution, but that, in their aboriginal loveliness, they will be allowed to sleep in the shades of the Australian forests.

Question put, and agreed to.

Bill read a second time, and committed for Monday, 18th June.

HOUSE OF COMMONS.

Monday, 18th June, 1900.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

Considered in Committee.

(In the Committee.)

[Mr. J. W. LOWTHER (Cumberland, Penrith) in the Chair.]

Clauses 1, 2, 3, and 4 agreed to.

Clause 5 :—

THE SECRETARY OF STATE FOR THE COLONIES (Mr. J. CHAMBERLAIN, Birmingham, W.): The Amendment

which stands first in my name, as well as some other Amendments in my name, are all closely connected. They are all placed on the Paper in connection with the arrangement which, as I stated to the House, had been made with the delegates of the different colonies with regard to the question of appeal. The earlier Amendments are purely verbal, consequential on what is really the only substantial Amendment, that to Clause 74. But as, of course, if the Committee were disinclined to pass the Amendment to Clause 74, these earlier Amendments would be unnecessary, I think it would be convenient that I should take this opportunity of stating our position in the matter. I also think it would be convenient, if there is to be a discussion on the principle—which I rather hope may not be the case—that it should take place on this formal Amendment. I think the question is one of some difficulty and complexity, and therefore, even at the risk of repetition, I will venture to remind the Committee of what has already passed. The Bill which was sent to us from Australia dealt with the question of appeal in rather a drastic fashion. It practically abolished the ancient appeal to the Privy Council in constitutional cases, except where the public interests of any part of Her Majesty's dominions outside Australia were concerned. To their proposal the Government, acting as trustees for the Empire, took serious exception. We stated from the first that it would be quite impossible for us to assent to it. We explained that we held it to be our duty to maintain this right of appeal wherever any interests outside Australia were concerned. We stated, however, at the same time, that where questions arose which were purely of Australian concern, whatever opinion we might ourselves entertain as to the wisdom of the proposals that were made by the Australian people, we should not think it our duty to interfere or to insist upon any Amendments. We were unable at that time to come to any agreement with the delegates who had been appointed by the five federating States. They were in a somewhat exceptional position, because they had at that time only received a special mandate to carry the Bill exactly in the form in which it was passed by the Australian people. They did not feel themselves competent,

therefore, to discuss with us any form of amendment. Accordingly Her Majesty's Government introduced a Bill with our own Amendments. On our own responsibility we restored the right of appeal as it had previously existed. But after we had introduced the Bill in that form, and between the First and Second Readings, we had further communications with the delegates from Australia. Those communications, though not confined to the delegates of the eastern States, were chiefly with them, because the delegate from Queensland had already agreed to our proposal. It was the delegates from the four southern States who still desired either that the original Bill should be passed in its original form or that some arrangement should be come to as to the Amendments we proposed. The result of those communications with the four delegates was that we came to an arrangement. I have observed that that arrangement is frequently spoken of as a compromise. I think that is altogether an inaccurate expression. As I understand it, a compromise is an amicable understanding between parties who have differed, according to which each party gives up something in order to secure unanimity. But in the present instance I should describe our understanding as an arrangement in which neither party gives up anything to which they attach importance, which I think is a more satisfactory state of things. We, on behalf of Her Majesty's Government at any rate, desired only that the right of appeal should be maintained in all cases in which other than Australian interests were concerned, and that was absolutely conceded to us by the four delegates concerned. They on their part, I will not say exclusively, but at all events mainly, desired that certain constitutional questions which might hereafter arise as to the limits *inter se* of the powers of the States and of the Federal Parliament should be finally decided by the High Court, and that also was secured to them by the agreement at which we arrived. Having arrived at that agreement, we had to communicate it to Queensland, and the Queensland delegate and his Government both objected to the arrangement, as they were prepared to go much further in the direction which indeed commended itself to Her Majesty's Government, although we did not think it our duty to force it on the Australian

colonies. I wish the Committee to bear in mind the extraordinary difficulty of the negotiations in which I have been engaged. In the first place I have had to deal with five separate interests, not to speak of the interests of Western Australia and New Zealand, which, not being federating colonies, may be put, perhaps, in the second rank as regards this question. I have had to deal with five separate interests represented with five different colonies. The first difficulty was to ascertain the opinion of those five separate colonies. How was I to ascertain it? I was blamed, rather roughly I think, by the right hon. Gentleman the Leader of the Opposition for, as he said, going behind the delegates in this matter. I am glad to think that they, at any rate, did not take offence at anything which I did; and I think that what has happened since has fully justified my attempt to ascertain from other respectable and influential sources the opinion of the Australian people as well as the opinions of the delegates and the Governments. But if I were to accept the opinions of the delegates as representative of the five Australian colonies, I am met with this difficulty—that the Australian delegates themselves agree in stating that they had no credentials for such a purpose; that they came here with a limited mandate. If, however, I try to get the opinions of the Governments who appointed them I am met with this difficulty—that those Governments, for whatever reasons I am totally unable to divine, have refrained from first to last from giving me any official indication of their opinions. Up to the present day I am still without any official communication whatever in regard to the various proposals which have been under consideration. I say, then, that the position has been one necessarily of some difficulty. The agreement to which I have referred removed all difficulty so far as the Imperial Government was concerned. We have got by that agreement everything that we desire. There remains the necessity, if possible, of satisfying in any final settlement the whole of the five colonies concerned, and in regard to that our position is really a Ministerial one. We have only to ascertain what the wishes of the Australian colonies are, and when we have ascertained them we have to carry them out. To us it is really of no consequence so far as those Imperial

interests go with which we were chiefly concerned, what the decision of the colonies may be. At the time I last addressed the House the position was this. Four colonies out of the five, by the mouths of their delegates, had approved of the agreement at which we had arrived. Therefore I placed on the Paper Amendments to carry out the decision which, although not unanimous, was at all events the decision of the majority of those concerned. Since then, through the usual channels of information—not by virtue of any official communication from any of the Governments concerned—I have learned that the arrangement to which we came is objected to on two grounds. In the first place, the colonies, perhaps with the exception of South Australia—and when I speak of the colonies I am speaking of the Governments of the colonies—appeared to consider that it would limit the right of appeal from the State Courts more than was done by the original Bill. It appears that there is some difficulty in ascertaining what would have been the exact effect of the original Bill. There is some difference of opinion amongst legal authorities in regard to this matter. Some assert that under the original Bill it would have been open to litigants, even where constitutional questions involving the powers of the States were concerned, at their option either to appeal to the Privy Council or to the High Court. Other authorities, on the contrary, say that in regard to those constitutional questions the appeal would only lie to the High Court, and this would be final. I do not pretend to settle that matter. I only say it is not as clear to me as it might be that the original Bill did allow of such an appeal. But at all events, it is clear to me that the general opinion in Australia at the present time is in favour of such an appeal—is in favour, that is to say, of a possible appeal to the Privy Council in cases which arise in the first instance in the State Courts. The second objection taken was that we had provided that no appeal should lie from the High Court in such cases, unless the consent of the Governments of the two States or of the State and the Federal Government respectively concerned had been obtained to such an appeal. That appeal would have been by the leave of the Governments concerned who were

interested in the settlement of the constitutional question. A serious objection has been taken to that by very distinguished legal authorities in the colonies, and it appears to be supported by the Governments, that it was introducing the executive into judicial questions. That would be a most unfortunate result. As soon as these objections were clearly stated Her Majesty's Government endeavoured to see whether some other changes might not be made which would, as we hoped, secure unanimity, including Queensland as well as the other four colonies, and would satisfy the particular objections that had been taken. We were assisted in our inquiries by the opinion that came to us from Chief Justice Griffith, in which he suggested certain amendments of the proposed agreement to carry out these objects, and I am glad to say that we have now again, after communication this time with all the five delegates, arrived at a further proposal which does, at any rate, absolutely meet the two objections to which I have referred, and I am not aware of any other objections that have been taken. We propose in the new form of the clause which appears on the White Paper to-day, and which I shall propose at a later stage, that the right of appeal shall be restricted only in a single case—only in the case of a constitutional question arising as to the powers *inter se* between the States or the States and the Federal Government, and arising in the High Court. We strike out altogether all reference to the State Courts, leaving the state of the law on the question of appeal exactly where it was before, and we deal only with exceptional cases arising in the High Court. If I may express in arithmetical terms my own idea of what has happened it is this. Whereas in the original Bill as it was presented to us by the Australians in nine cases out of ten the right of appeal to the Queen in Council would have been restricted, and whereas by an agreement which we came to before the Second Reading, and before the delegates of the southern States were heard, that right of appeal would have been restricted in perhaps five cases out of ten, now by the new arrangement it will only be restricted in one case out of ten. I do not put that before the Committee as an absolutely accurate statement, but I put it as representing my own view of the changes that have been made.

As to one point, however, there can be no doubt whatever, and that is each successive change has been in the direction of the view entertained from the first by Her Majesty's Government. Our rights in the matter lapsed when we got the concession which secured the right of appeal in all cases which were external to purely Australian interests. But our interests in the matter remained because in our conviction it was to the advantage of Australia that it should maintain in the fullest degree this right of appeal, and that they should have thoroughly impartial and authoritative Courts to go to, as Canada can go and as Australia has hitherto gone. One other change has been made, which is also of great importance. We have now, with the consent of the five delegates concerned, substituted the leave of the Court for the leave of the Government. It is now, therefore, a purely judicial affair. In any case, even in a very limited class of cases in which constitutional questions arise—in which purely Australian constitutional questions arise in the High Court—the High Court may give leave to appeal; and, having regard to the unanimous opinion of the highest legal authorities in Australia as to this right of appeal, and apparently to the general conviction on the part of the majority, at any rate, of the legal profession and the majority of the commercial classes, I cannot doubt that in cases of real importance such leave would certainly be given. I have communicated to the whole of the Governments the proposals at which we have arrived. I have also communicated to them the fact that these proposals are recommended unanimously by the delegates in this country, but I have not had up to the present time any official reply from these Governments.

MR. ASQUITH (Fifeshire, E.): When did you communicate with them?

MR. J. CHAMBERLAIN: On Saturday. There has been time for a reply, because one or two Governments have communicated, but they have not dealt definitely with this matter. If, however, one may draw a conclusion from other sources, from what has appeared in the newspapers and in reports from Australia, it would seem that the new proposals are likely to give general satisfaction. There

is one further remark which I think I ought to make. I owe it to Mr. Dickson to say that while he has joined in recommending this proposal he has stated very fairly that neither he nor I is a lawyer, and that we may as laymen have misapprehended the effect of the proposals. I hope that that is not the case, and I am confirmed I think, in my opinion, as to the effect of these proposals by the stronger and much more valuable opinion of the Attorney General. I think it right to say that Mr. Dickson put forward a *caveat*, that if it should be found that the effect of the new clause is not as I have stated it he would not feel himself bound by the recommendations he has made. I will only add that I think the Committee will understand that while we rejoice very much that the Australians have voluntarily come so far in what we believe is the direction of their true interests in this matter, we desire nothing but to carry out their wishes, whatever they are. Therefore, if it should happen, as it may—although I have no reason to anticipate it—that in the interval between now and the report stage they should unanimously or by a majority desire any further change, always provided it does not interfere with the Imperial interests already guarded, I shall be prepared to propose such change to the Committee. I am not, therefore, binding myself to an absolutely final arrangement. That is a matter which, in my opinion, rests with the Australian colonies. I only ask the Committee now to pass in the form in which I put them forward the Amendments before the House, believing at all events they will go a long way in the direction of satisfying all the interests concerned.

Amendment proposed—

"In page 2, line 14, to leave out from the word 'Notwithstanding,' to the word 'State,' in line 18, both inclusive."—(Mr. Secretary Chamberlain.)

Question proposed, "That the words proposed to be left out stand part of the clause."

MR. HALDANE (Haddingtonshire): The right hon. Gentleman has quite reasonably proposed to take the discussion on the new proposal of the Government at this moment, although it comes long before we

reach Clause 74. When the right hon. Gentleman went on to suggest, as I understood him, that in this proposal there was really nothing calling for a prolonged discussion, I, for one, am unable to agree with him. Looking at the clause which he now proposes, it seems to me that the position which he takes up is widely different from the position he took up upon the First Reading. I feel all the more encouraged to call the attention of the Committee to this fact, because we are placed in a most extraordinary position by the course adopted by the right hon. Gentleman. What is that position? The clause which we are now called upon to debate is one which most of us have seen only within the last few hours. It was not on the Blue Paper, for on that Paper there appears a clause which as been printed, and which has been there or upwards of three weeks. Therefore, we have all been entitled to assume that that was the clause which indicated the proposition of the right hon. Gentleman, and we have been encouraged in that belief because it remained there and was circulated as late as Saturday morning last, notwithstanding the storm of adverse criticism by which it was received by almost every Government in Australia.

MR. J. CHAMBERLAIN: I do not wish to interrupt the hon. Gentleman, but I ask him to bear in mind that we have yet had no official criticism from any of the Governments to which he alludes.

MR. HALDANE: I know that the right hon. Gentleman himself has rather an affection for newspaper reports and telegrams, and I collected a considerable bundle of opinions and criticisms on this subject which appeared in *The Times* and other newspapers, as telegraphed from Australia, and which certainly did indicate very great dissatisfaction with the clause as it appeared on the Blue Paper. I believed until a very recent time—for it so happens that I had information in advance—that the clause as it appeared on the Blue Paper was the clause which we were going to discuss. But within the last few hours there has been circulated another Paper containing a totally different clause, and one which falls very far short of what the right

hon. Gentleman laid down as his standard in the discussion on the First Reading of the Bill. I say at once that I enter upon this discussion with the strong desire that this should not be made in any sense a contentious Bill. We all wish to get it through, and I will simply remind the Committee how most of those hon. Members who are with me regard this Bill as a whole. We felt that, so far as Australia was concerned, it was for the Australians to shape the measure in their own fashion. We felt that with regard to the question of the right of appeal it was an important question, which ought not to have been allowed to rise, and would not have arisen if, two years ago, when this question first came forward, the Government had been a little more in earnest about creating an Imperial Court of Appeal. Had this been done we should probably not have had these difficulties with which we are face to face at this moment. My contention is that the Amendment now brought forward is more objectionable, as affecting Imperial interests and the scope and power of the Privy Council, than the clause as it originally stood. I desire to put it in as simple language as possible. Let me remind the House what the various stages of this matter have been. Clause 74, as it was brought forward by the Delegates, provided that no appeal should be permitted in regard to any question of the interpretation of the Constitution unless that question involved the public interest of Her Majesty's dominions outside Australia. In other words, where the public interest of Her Majesty's dominions outside Australia are concerned it was proposed that there should be an appeal to the Privy Council. My chief complaint against the new clause is that the right hon. Gentleman has dropped out of this question all reference to questions of public interest in Her Majesty's dominions outside Australia, and has substituted a definition which does not cover the same field, and which precludes from the review of the Privy Council a number of questions which may be of very great Imperial moment, and for which no provision is made in the words of the right hon. Gentleman's new clause. The first Amendment which the right hon. Gentleman made was after the debate on the Second Reading. In the debate on the First Reading the right hon. Gentleman had laid down his position

very plainly. He said on the 14th of May last—

"What I say is that there is no such unanimity as should make us hesitate in a matter of this vast importance, at all events, to take time, and, for the present at any rate, retain the right of appeal as it now exists."

Some of us thought that was going too far, but on the 21st of May last he announced for the first time his compromise, and he said—

"The effect of this understanding will be that Clause 74 will be exactly reversed; that whereas in the original clause appeal was to cease in all cases except where the public interests of some portion of Her Majesty's dominions outside Australia were concerned, in the clause as we now propose to insert it, an appeal will lie in every case except in these cases in which Australian interests alone are concerned. That, I think, gets rid of practically every one of the difficulties I anticipated when I referred to the original clause in introducing the Bill."

Now my right hon friend the Member for East Fife, who followed the right hon. Gentleman in that debate, naturally received the right hon. Gentleman's explanation with some reserve, although we were all glad to know that something in the nature of a compromise had been arrived at. But what we have here is not a compromise. I agree with the right hon. Gentleman that a compromise is a transaction between parties who have differed and in which something is given up by each party in order to secure unanimity. In this case the right hon. Gentleman not only gives up that which is claimed, but he also gives up something which was not asked for. The right hon. Gentleman's proposal gives up now the exception of public interest—which was conceded by the delegates—affecting the Queen's dominions outside Australia, an exception which never was in controversy, and he has introduced a clause excluding this right. Both under the clause which the right hon. Gentleman first proposed, and under the clause which he now proposes, he excludes from the Privy Council important questions which would have been included in the proposals as originally drafted by the delegates. The first proposal of the right hon. Gentleman declared that no

"as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or

more States shall be capable of final decision except by the High Court, and no appeal shall be permitted to the Queen in Council from any decision of the High Court on any such question unless by the consent of the Executive Government or Governments concerned, to be signified in writing."

That is the clause which was so fiercely assailed in Australia. In the first place it has been said that there was there an objectionable provision in regard to the introduction of the Executive Governments into matters of judicial concern. I do not wonder that that proposal raised a storm of hostile criticism in Australia. But there is another point, and it is in regard to the expression "final decision." It was pointed out that this clause applied not only to public controversies between Governments, but that it applied also to private litigation, and that if the clause passed, a private litigant might find himself in this position; he had fought his case and been unsuccessful, and his opponent had taken him to the Privy Council or he had taken his opponent there. There somebody raises the contention that there is a question of the limits, *inter se*, of the legislative powers of the two Governments and the validity of the Colonial Act may be questioned. In such a case the Privy Council would have been bound to say, under the wording of the clause, "We cannot listen to you, for we are precluded from hearing the case, and we are bound to send it to the High Court." That was felt to be a clause which was altogether intolerable, and it has been made the subject of severe criticism. Now that obnoxious expression "final decision" has been got rid of, I am glad to say, and now we are face to face with a new clause which has appeared on the Paper for the first time to-day.

"No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question howsoever arising as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council."

It is quite true that there is a class of question which was excluded by the original clause of the delegates which this clause permits. For instance, suppose there arises a question under

the power to make laws for the peace, order, and good government extended by the specific provisions of Clause 51 outside the region of Australia, and outside territorial limits—the question would arise as to whether legislation in the colony would be *ultra vires*. Now under the proposal made by the right hon. Gentleman that would be appealable which could not have been so under the original clause. But this is a very rare case. I have had some experience in these matters in Canada, and during an observation extending over fifteen years I do not know a single instance of such a question arising. I know of an instance arising in the case of one of the Australasian colonies as to a bigamy law which was said to have been passed in such terms as to extend to an offence committed outside the limits of Australia, and the Privy Council held that the effective scope of the statute did not extend outside those limits. But not one question in a hundred which arise will be of this nature, but questions of another class will arise constantly. Let me take a concrete case which arose within my own knowledge with regard to British Columbia. Litigation arose there in reference to the employment of Chinese labour in a colliery. A Bill had been brought before the legislature for the prohibition of female and child labour in mines, and someone moved an amendment to add the words “and Chinamen” to this prohibition. The shareholders, finding that Chinamen were being employed, brought the question before the court, applying for an injunction. When this litigation arose some ingenious person in the case raised the objection that power to legislate for aliens was reserved exclusively to the Dominion Parliament, and that the legislation of British Columbia was *ultra vires*. The point was one of importance because there was a treaty between Her Majesty and the Emperor of China which gave the most-favoured-nation treatment to Chinese subjects, and there was a question as to whether this was not affected by the legislation alluded to. This was a question affecting the Queen’s dominions outside Canada, and the matter came before the Privy Council, and they declared that the legislation was *ultra vires*, and in that way they got rid of the matter. I will take another illustration. There was a great case about eighteen

months ago between Ontario and Quebec and the Dominion Government, which arose in regard to the control over the great lakes and the great rivers in Canada. That was a matter in which the Imperial Government were interested, because it was a question in which the rights of the American as well as the Canadian fishermen were involved. It was felt that the matter should not be left in the hands of the provincial Government, having regard to the complications which might arise. The matter came before the Privy Council, and it was ultimately decided that it was not within the power of any Province of Canada to deal with this matter at all. I give these illustrations because they are cases which arose undoubtedly as to the limits *inter se* of the constitutional powers in the Dominion of Canada. I think the Committee will appreciate the reason why I do this. These were cases where the public interest of the Queen’s dominions outside Canada were vitally concerned, and in which there was a right of appeal under the Constitution. Such cases may arise in relation to Australia, and in such an emergency there would have been a right of appeal under the Bill which the delegates introduced, but there will be no such appeal under the clause which the right hon. Gentleman has presented to the House. That seems to me to be a consideration which, at all events, should entitle us at this stage to ask for a little more time than we have had to consider a clause which hardly one of us saw before a few hours ago, and which now comes before us for discussion practically for the first time. It is quite true that the clause of the right hon. Gentleman has some advantages—for example, it makes it clear that there can be an appeal from the State Court even upon a constitutional question to the Privy Council. I think that was probably not so under the Bill as it originally stood, but what an extraordinary provision it is. The clause provides that if you have litigation in the State upon a constitutional question you may appeal either to the Privy Council or the High Court. If you appeal to the High Court the decision is to be final unless the High Court gives you leave to appeal to the Privy Council. It is, in other words, a court of final jurisdiction upon this matter. Supposing a litigant takes his case first to the Privy Council and succeeds, his opponent may, in

another case, raising the same point, take him up to the High Court to get round the difficulty, which he can do because the proposal of the right hon. Gentleman gives him a right of appeal. But that is a totally different appeal to the one in Canada, because there the Supreme Court is not a court of final jurisdiction. As the clause makes the High Court of Australia a court of final jurisdiction, there may well be conflicting decisions between the High Court and the Privy Council. I do not think that is an academic matter. I for one protest against pronouncing an opinion upon this question with only a few hours consideration, and without an opportunity of anything like full discussion. It may be said that these matters are more or less technical; but, after all, what is there in this measure about which there is any controversy except this right of appeal to the Privy Council? I am not one of those who ever have insisted upon that right. I am quite prepared to say that the views of the delegates are entitled to great weight, and I am prepared to allow the people of Australia to prefer the decision of the Australian Courts upon questions affecting the interpretation of the Constitution. But what I do protest against is the right hon. Gentleman coming here and taking a high constitutional attitude and telling us that the right of appeal was to remain as it stood, and then coming down here with a clause which gives away more than the delegates ever asked for. It seems to me that what we have got here is not a compromise at all. Surely we ought to have a little more time to consider these matters more fully than is possible at the present moment. There are vital questions involved in this Bill which concern not merely the Government of Australia but they affect Imperial interests as well, and we ought to be allowed sufficient time to make up our minds in a satisfactory manner. I am aware that the right hon. Gentleman has had a most difficult task in negotiating this matter, but I protest against the way in which the right hon. Gentleman is asking Parliament to come to a decision in this matter, just as if the issue was a comparatively simple one.

THE ATTORNEY GENERAL (Sir ROBERT FINLAY, Inverness Burghs): I was very glad to hear the hon. and learned Gentleman urge that this Bill should not

be treated as a contentious Bill, and I am quite sure it will not be so regarded. At the same time I was a little bewildered by the hon. and learned Gentleman's attitude on this Amendment. The hon. and learned Gentleman says that this clause gives the delegates more than they ever asked for—that so far from being a compromise it gives them all they originally asked for and something more. That is the proposition of the hon. and learned Gentleman.

MR. HALDANE: I did not say all, but I quite admit that something has been added, although it is very small.

SIR ROBERT FINLAY: I am glad to hear that qualification, although the statement in the hon. and learned Gentleman's speech was that the clause was not a compromise, and that it gave the delegates all that they asked for and something more. I am satisfied that not only is the view propounded by the hon. and learned Gentleman absolutely novel, but that it is one which will not commend itself to anyone who has studied the matter at all. I would remind the hon. and learned Member that when this Bill, in the form in which it came from Australia, was under consideration in the House the hon. and learned Member suggested that it should be accepted in the form in which it came from Australia. I am not going to occupy the time of the Committee with technical matters, but a reference to the broad features of the Bill will show that the hon. and learned Member's view with regard to the comparative effect of the Amendment before the Committee is really without any substantial foundation. It is not of very much use to appeal in this matter to experience gathered in other fields, because in this Bill we have to deal with enactments of a very peculiar and very special kind. I will ask the Committee to refer to the terms of the Constitution. They confer upon the Parliament of the Commonwealth power to make laws with regard to a great many matters, and I will direct attention to two or three of them, as showing the class of questions which might arise. Under Head 10 power is given to make laws as to fisheries in Australian waters beyond the territorial limits. Head 29 refers to external affairs, and Head 30 to the relations of the Commonwealth with the Islands of

the Pacific. There are several others which I might mention, but these are sufficient for my purpose. With regard to every one of these heads, questions of very great gravity might arise as to the extent of the powers which have been conferred upon the Parliament of the Commonwealth. Take the question of the power to deal with Australian fisheries beyond territorial limits. The question might arise, what are Australian fisheries not within the territorial limits? What are the powers to be exercised with regard to the persons who may frequent these fisheries? With regard to external affairs it is unnecessary to point out the wide scope that might be attributed to words of that kind. In connection with all these heads questions of very great importance as to the extent of the delegation to be conferred on the Parliament of the Commonwealth might arise. I cannot at all agree with my hon. and learned friend that only in very exceptional cases questions as to the extent of these powers would arise. I venture to say that they would arise in nine cases out of ten. What I desire to draw the attention of the Committee to is this—that the question of what powers have been delegated to the Australian legislatures, whether the legislatures in common or the legislature in each State, may be matter of grave Imperial concern; but how these powers, having been delegated, are to be distributed as between the central and the local legislatures will be almost invariably a matter of Australian concern. It may be of the utmost possible importance to determine accurately what is the extent of the powers delegated under Article 51. But the question whether a certain power is to be exercised by the central legislature or the local legislature is a question of Australian importance, and almost entirely of Australian importance. My hon. and learned friend says the Bill as it came from Australia provided that in matters affecting the public interest of some other part of Her Majesty's dominions an appeal would be allowed. That is perfectly true. I do not intend to comment upon the extreme vagueness of such language as "the public interest of some other part of Her Majesty's dominions," but it is language which would introduce uncertainty into a class of cases where certainty is eminently desirable. No one

would know what was covered by that assumption, but when my hon. and learned friend looks back with regret to these words which appear in the Bill as it came from Australia he forgets altogether that there was an exception engrafted on the prohibition of the right to appeal. The prohibition of the right of appeal extended to all constitutional questions. It was provided by Article 74 as it came from Australia that no appeal on any question affecting the construction of the Constitution would lie except where the public interest of some other part of Her Majesty's dominions was concerned. Now we, by this clause, eliminate altogether the prohibition of appeal on constitutional questions generally, and we confine the prohibition to the one case of conflict as between a State and the Commonwealth or as between two States, as to by which of them the power conferred should be exercised. If the question is whether the power is to be delegated at all, then an appeal would lie subject to leave from Her Majesty. But if the question is not one of delegation, but merely of distribution, and as to whether, the powers having been conceded, they are to be exercised by the central or the local legislature, then there is no appeal from the decision of the High Court, unless the High Court thinks fit for special reasons to certify an appeal. My hon. and learned friend put a case which I confess rather surprised me. He said, and it is the case, that this clause as it now stands leaves absolutely unfettered the right of appeal to the Privy Council. As the Bill stands any litigant may take any point including constitutional questions of this kind straight from the Supreme Court of the State to the Privy Council. There is no doubt about that at all. Then my hon. and learned friend asks what would happen, suppose a litigant takes a point of that kind to the Privy Council and it is decided, and that the same point arises in another case and is taken to the High Court. In that case, of course, the High Court will follow, and would be bound to follow the decision given by the Privy Council.

MR. HALDANE: Does the Privy Council also follow the High Court?

SIR ROBERT FINLAY: Certainly not, because it is not usual for the

Appellate Court to follow the Court below. The very clause which my hon. and learned friend has been criticising provides that, should the High Court think fit to certify that the case is one proper to be heard on appeal, then the case may go to the Privy Council. I do ask the Committee whether a more extraordinary proposition was ever put forward than that, after the Privy Council, to which the High Court was allowed to appeal, had decided a particular point in one way, the High Court should decide the same point in another way and refuse leave to appeal to the Privy Council? I venture to say that a graver observation touching the constitution of a Court never was made. If there were any special circumstances which led the High Court to think that the decision of the Privy Council in the first case was not altogether applicable in the second case, they would of course under these circumstances grant leave to appeal, and the matter would come before the Privy Council. This clause shows that the Privy Council is recognised as the ultimate Appellate Court, altogether in deference to Australian feeling, only for special reasons, and that the High Court is to certify before there can be an appeal. I venture to think that the case quoted by my hon. and learned friend is a perfectly impossible one, and that something in the nature of apology is due to the prospective High Court from him. Then my hon. and learned friend put a very interesting case of legislation with respect to Chinese labour as a case of conflict between a local and central authority in which it would be important that there should be an appeal. I would remind my hon. and learned friend that in the Bill as it came from Australia it was very far indeed from being clear that there would have been an appeal in such a case. I doubt whether it could have been held that "the public interest of some other part of Her Majesty's dominions was concerned," or that the case would be considered as coming within the exception giving the right of appeal. The case, however, is one of the most exceptional character. I venture to think that we have dealt with nine-tenths of the cases which will arise under the constitution. As to how the powers delegated are to be distributed in Australia the Imperial Government is, as a rule, not concerned. My hon. and learned friend also said that there ought to

be time to consider the effect of this clause. I recognise the weight of any suggestion from my hon. and learned friend, but I would remind him, and I would remind the Committee, that there is a very strong desire in Australia that there should be no further delay in the prosecution of this measure. I would also remind the Committee that there will be a further opportunity, after this Bill has passed through Committee, of discussing questions of importance on Report.

MR. HALDANE: I understand that the Australian States have not expressed any opinion on this Amendment. It was only drafted on Saturday and cabled out on Saturday night, and now, on Monday, we are asked to accept it.

SIR ROBERT FINLAY: I would ask my hon. and learned friend not to forget that there is a very great desire in Australia that this Bill should be passed with reasonable expedition. What that expedition is will be for the Committee to decide. One observation before I sit down. I much regret that my hon. and learned friend seems to be under the impression that this Amendment put on the Paper by the right hon. Gentleman introduces an alternative appeal to the Privy Council or the High Court.

MR. HALDANE: That was in the last edition but one.

SIR ROBERT FINLAY: It is embodied in this Amendment, and was introduced in the last Amendment as well.

MR. HALDANE: We did not know what it was.

SIR ROBERT FINLAY: That is not the point. The point is that my hon. and learned friend says that an alternative appeal is introduced, and he drew a ghastly picture of what might result from a litigant going from one Court to another. But my hon. and learned friend must remember that the Bill as it came from Australia provided for that alternative appeal.

MR. HALDANE: I said so, because there was an appeal in all cases, except constitutional cases, in the Bill as it came

from Australia. But you have now taken away the right of the Privy Council to give leave to appeal, and you make the High Court the supreme court in constitutional questions.

SIR ROBERT FINLAY: I do not think that my hon. and learned friend appreciates my point. He put it that the evil of an alternative appeal was the result of something done by my right hon. friend the Secretary for the Colonies. The alternative appeal was in the Bill as it came from Australia. Under that Bill a litigant might go from the Supreme Court of the State straight to the Privy Council on any constitutional question, or instead of going to the Privy Council might go straight to the High Court, but there was this most objectionable state of things under that provision, that unless the matter fell within the exception, namely, as a constitutional matter affecting public grounds, the decision of the High Court was absolutely final. Under the Bill as it came from Australia it might well have been said that the High Court and the Privy Council were courts of co-ordinate jurisdiction and that the High Court had leave to go its own way. So far from having introduced that evil, what my hon. friend has done as the result of negotiations has been to remove all objectionable results from it, because it is now provided that the High Court may for special reasons grant leave to appeal even in the very limited class of cases in which the decision of the High Court is promulgated as one not the subject of appeal to the Privy Council. I do not claim to have converted my hon. and learned friend on this subject, but I hope I have satisfied the Committee that the sacrifice of these words which he so much laments, "unless the public interest in some other part of Her Majesty's dominions is concerned," is not one to be regretted at all. We have reserved the right of appeal in nine-tenths of the cases which may arise, and all we have done is to provide for no appeal except by special leave in a very limited class of cases—in which 999 out of every 1,000 would not be affected—relating to purely Australian matters.

SIR R. T. REID (Dumfries Burghs): I think it is much to be regretted in regard to this debate that it should have ever

been necessary. We recognise the difficulties the Colonial Secretary has had to contend with, but the more we think over the matter the more we must regret that it was thought necessary in any degree to interfere with the measure as it was sent from Australia. Let us see for a single moment how the matter stands. There was very great difficulty in the Australian colonies in coming to a concordance upon terms. A long time was lost and a great deal of labour and ingenuity was spent, and at last the colonies came to an agreement. The result of that agreement was sent over to this country. The right hon. Gentleman the Secretary for the Colonies unfortunately considered that it was necessary to make an alteration with regard to one subject, and that was the matter of appeal to the Privy Council. With the aid of the most expert legal advice, with the goodwill and assistance of the delegates from Australia, we have proceeded from one suggestion to a second, and then to a third, and at last we have to-day a still further alteration proposed to us, without being able to claim the assent of the Australian Governments or the Australian colonies to anything except what was originally proposed. It has been considered apparently by the legal advisers of the Government that some alteration was necessary in order to preserve the right of appeal to the Privy Council. I want the Committee to consider for a moment what is the real importance of appeal to the Privy Council. I think it is a very desirable thing to retain if we can, but I think it ought never to be imposed on the colonies, unless they wished it. I do not attach any great Imperial or constitutional importance to the preservation of the right of appeal by private individuals in matters of private importance to them. It is only when matters of public importance arise that any significance attaches to the right of appeal. What is the difference between the present proposals of the Government and the proposals made in the original Bill as sent over from Australia? According to the original Bill, in every private case—and these would be the great majority—unless a question as to the interpretation of the constitution arose, the right of appeal was preserved. That is to say, that the right of appeal was proposed by the Australians themselves to be reserved in eighteen out of twenty, and even ninety-nine out

of every hundred cases in any way likely to come over to this country, and the only restriction proposed upon the right of appeal was when questions of constitutional interpretation arose under the Act, which must be comparatively rare. But it was thought by the Australians that the right of finally deciding the interpretation of their own Constitution should rest upon themselves. They also made the concession that if the public interest of any other part of Her Majesty's dominions was involved there might be the right of appeal. That was to be a question for the Privy Council to determine. I do not at all doubt that strong legal advice was pressed upon the right hon. Gentleman by very eminent authorities, but it seems to me that the restriction on the right of appeal as originally proposed by the Australians themselves must only affect and could only apply in a few cases. However, unfortunately, the view of the Government was otherwise, and they commenced to make alterations. As the Committee is aware, we have had not much notice of the last alteration, but we will have an opportunity of discussing and considering it again on the Report stage. From the time when the original proposals were first made to the present there has been nothing but difference—friendly and respectful I quite admit—between the Government on the one side and one section or another of Australian opinion on the other. There has been, unfortunately, differences between the Australian colonies themselves in regard to what, after all, are very small matters in comparison with the enormous interests dealt with by this Bill. I would wish to point out to the Committee how comparatively small the real difference is between what was originally proposed in the Australian Bill and what is now suggested by the right hon. Gentleman. There was no restriction at all under the Australian Bill except in cases of constitutional interpretation, and even then there was no restriction if the public interest in any other part of Her Majesty's dominions was concerned. What have we got instead of that? I think myself that the difference is so small as not to justify all the trouble that has been taken and the risk which has been run of losing the Bill. The proposal now is that on questions of constitutional interpretation there shall be no appeal unless the High Court

certifies an appeal. That is a difference which it seems to me ought not to occasion any difficulty. If I were an Australian I would very likely consider it a very proper clause; but I think it is a great pity that it was ever proposed here. The right hon. Gentleman says that he does not now know whether the Australian Governments are in favour of his proposal, and that he may learn between now and Report that some other scheme will be satisfactory to them, in which case he says—and most wisely says—that he will instantly lay it before the House provided it does not interfere with his views as to the duty of the Imperial Government as trustees for the whole Empire. I most heartily hope that some proposal will be made—nothing could be more eminently satisfactory, from my point of view, than that some proposal should be made—to put an end to this difference—a difference which I think is very trifling—on a very important Bill, and which has given a great deal more trouble than it need have done. But if not, I think the Australian colonies would be very well advised if they accepted the proposal of the right hon. Gentleman. It will do no harm, I believe, to their Constitution, and certainly it contains no element of injustice or unfairness. But if they do not do so, and continue to express, what exists to a considerable extent in Australia, a decided preference for the form of the Bill to which they all agreed in the first instance, I would express the hope that the Government even now, after having done their best according to their own view of their duty, will revert to the Australian view, which I think is perfectly harmless and cannot in any degree interfere with Imperial interests.

SIR WILLIAM ANSON (Oxford University): The right hon. the Colonial Secretary said he hoped that any discussion that took place this evening would be on this particular clause, but as my criticism will rather point to a suggestion of a slight increase in the legislative power given in the clause, I hope I shall not be out of order in making some general remarks on the subject. I do not wish to go into the question of the delegation or distribution of powers. I followed the difficulties and the subtleties of the hon. and learned Member for East Lothian, and was painfully convinced

by the arguments of the Attorney General that his fears were unfounded. I, however, pass from that, and will venture, in spite of all that has been said as to the propriety of our leaving the matter entirely to the Australians, to express, what I hope is not improper, some interest in the working of this Constitution as we expect it to develop in the future history of the colonies. The Appeal clause in the Bill originally submitted by the colonies to the Government was extremely difficult to allow in the form in which it was drawn, because it was so complicated and obscure that it was likely to lead to bickering and difficulty between the home Government and the colonies. I preferred the clause which was submitted to us shortly after the Bill was introduced, though it appeared to me to have some defects which, if it were before us now, I should have pointed out as a source of danger. The present clause seems to me to confine the matters on which there is to be no review of the Privy Council to very distinct and reasonable limits, and I only regret that the Government departed from what I still think was a counsel of perfection when they first presented the Bill to the House—the retention of the right of appeal as it exists, I believe, for the Dominion of Canada. I wish to impress on this House that we are throwing upon this High Court the decision without review of questions which are very likely to impair its character and its utility in the Australian colonies. The questions that will come before it are questions as to the distribution of power between the Federal Government and the States, and anyone who has followed the history of the Supreme Court in America must know that these are the questions which have most tried the firmness, and have even to some extent impaired the character, of that Court. The cases which will come before the High Court under this clause without doubt will be cases in which the Federal Legislature or the Executive will be alleged to have exceeded its powers as against some one of the States; and, therefore, the issue will be to some extent a political issue. They are the more likely to arise because it must be remembered that the Australian colonies are not going into this federation from any external pressure, but of their own initiative, and because they believe that their voice will

sound with greater force and volume in the affairs of the Empire as a Commonwealth than as separate colonies. The cases which will come before the High Court will be cases in which the Legislature or the Executive of the Commonwealth will be one of the litigants, and a State or States will be the other. But it must be borne in mind that the appointment of the judges of the High Court will rest with the Executive of the Commonwealth; and there is no limit to the number constituting the High Court. Thus it is conceivable that when some great political issue as to the federal power is before the Court, or is likely to come before it, it may happen—as I believe it has happened in the United States—that the members of the Court would be gradually increased or diminished according to the wish of the Executive, so that a particular decision or course of policy of a certain character may be determined and arrived at in a certain way. This consideration points to the desirableness of securing the High Court from any possible imputation on its character by granting an appeal to the Privy Council; and if this were done no conceivable motive or reason for affecting the composition of the Court could arise. Though it seems paradoxical to say so, the very fact that the decisions were subject to appeal, and were not to be final, would, I believe, increase the finality of their character—that is to say, they would be accepted without hesitation because they would be above suspicion, inasmuch as the ultimate decision would lie with the Privy Council. I wish it were possible to go back to the original decision of the Government to retain the right of appeal in all cases; but as this is no longer possible I venture to suggest that the Federal Legislature should have power, without an amendment of the Constitution, to restore the right of appeal in those political and constitutional cases which were defined in the amending clause. If, after a term of years, it is found that the character of the High Court is suffering, it might well be that the Commonwealth Parliament might desire to restore the right of appeal to the Privy Council, but it could not do so without the very cumbersome process of amending the Constitution. If, however, the delegates were agreed on that subject a few amending words would give the Commonwealth Parliament the power I suggest. That would be of the greatest ad-

vantage. I know that it is risky to prophesy regarding the working of a Constitution, because no Constitution ever worked out as its authors or students expected; but I think that my suggestion would be an assistance in the working out of the Australian Constitution, and might be found useful for preventing any possible diminution in the respect which we all hope will be granted to the High Court of the Commonwealth. I do not think that in making this suggestion I can be accused of giving any cause of offence. It seems to me not to be friendly or hardly altogether respectful to the colonies to say, "Take your Constitution if you want it, so long as it does not interfere with Imperial concerns, and make the best of it." We are all interested in the character and conditions of this Australian Constitution; and we are all desirous to see the stones of the fabric laid on the surest foundation, and to promote the ultimate prosperity of these great colonies in which we are so much concerned; and it is for that reason I have ventured to make the suggestion.

MR. ASQUITH: I think the Committee will realise that we are approaching the consideration of a question of the highest importance under conditions of grave embarrassment. We are, on both sides of the House, I believe, equally impressed with the desire to put no obstacle of any kind in the way of the speedy attainment by our Australian fellow-subjects of a scheme of federation, but I think we might be well advised in the circumstances of the case in asking you, Sir, to report progress and to ask leave to sit again. The House has heard the speech of my hon. and learned friend the Member for Haddingtonshire and the reply of the Attorney General. My hon. and learned friend is of opinion that the clause in the form it has at present assumed does not safeguard the interests of the rest of the Empire as distinguished from Australia with the same clearness and efficiency as the clause which came from Australia. The Attorney General is of a different opinion. Again, my hon. and learned friend contends that you may have under this clause two irreconcilable decisions, one by the Privy Council and the other by the High Court in Australia, in reference to the same subject-matter in the same State. The Attorney General thinks, I do not know

upon what ground, that the High Court would be bound to defer to the Privy Council. I do not wish to pronounce any opinion upon either of these contentions, but when we are asked to pass a clause which did not appear in print until four o'clock this afternoon, and in regard to the interpretation of which these high authorities are in complete antagonism, it is surely placing a very great tax upon the confidence of the House. Even if we had been considering a Private Bill, and not a Constitution, we should have had an opportunity of careful deliberation and of arriving at an opinion which would then be, possibly, of some value. I hope I shall not be accused by anyone of wishing to delay the passage of this Bill or of disrespect either to the Imperial Government or the delegates who have been concerned in these negotiations if I refer to the history of this clause as not creditable to our way of doing business. What does it consist of? The Bill in its original shape, as it was brought from Australia, was submitted to the whole of the Australian people, after prolonged deliberations in their various Legislatures. The Imperial Government, as we now know, took no effective means of conveying to the Australian people what, a moment after the Bill arrived here, they discovered to be a matter of Imperial concern and a real danger to the unity of the Empire. The Australian people having passed the Bill in the shape in which it was passed without any warning whatsoever that apprehensions of that kind had been or were about to be entertained upon this side of the water, the delegates came over here with a restricted mandate, having no power to do anything, as it appeared, but to agree to pass the Bill in the form in which it was assented to by the Australian people. That is the first stage of the matter. Then we come to the First Reading of the Bill in this House, when the right hon. Gentleman the Colonial Secretary devoted a very large part of his speech to showing that the Australian delegates were not authentic exponents of the opinion of Australia, that that opinion could be better collected from other sources, which he specified, and that that opinion was hostile to the clause as it was passed upon referendum to the Australian people, and was in favour of an unrestricted right of appeal. The Bill as it was presented to

this House on the First Reading gave an absolutely unrestricted right of appeal. That was the second stage. A week later came the Second Reading, when the matter assumed a third and totally different aspect. The delegates, who had had a restricted mandate which did not authorise them to alter a single comma in the Bill, appear to have agreed with the right hon. Gentleman to a form of clause which was totally inconsistent with the position taken up by him on the First Reading of the Bill, and imposed on the right of appeal those very restrictions which he had declared to be fatal or dangerous to the unity of the Empire or to the interests of the Empire. The House will remember the speech the right hon. Gentleman delivered.

MR. J. CHAMBERLAIN: I think the right hon. Gentleman misunderstands me. I never said that the restrictions on the right of appeal in purely Australian cases would affect the interests of the Empire, and it is to that we have now absolutely confined this Bill.

MR. ASQUITH: My argument is, of course, directed to Clause 74, which never did anything at all to restrict the right of appeal except in relation to constitutional questions. The right hon. Gentleman knows that the general right of appeal has always been unimpaired. That was the third phase. I spoke upon that occasion, and I welcomed the understanding which had been arrived at between the right hon. Gentleman and the delegates, because I thought that far too much fuss had been made over this business, and if any arrangement was come to the House might readily assent to it. Now we come to the fourth stage in the history of this transaction. The clause which represented, I will not call it the compromise, but the arrangement come to between the right hon. Gentleman and the unauthorised delegates at the time of the Second Reading, which had been on the Paper for three weeks, and which had been the subject of comment and discussion not only in Australia but in this country, completely disappeared as late as Saturday morning last; and we have had put before us this afternoon, without any notice, a clause containing an entirely different proposition. I think it is a distinct improvement, but it is an entirely new proposition, and we have never had an

opportunity of considering it. The right hon. Gentleman tells us that on Saturday, though he had the knowledge that the delegates had absolutely no authority to assent to this clause, he had telegraphed to the Australian Governments to know whether they had assented to it, and at this moment he is entirely without information from any one of those Governments, who alone are in a position to say whether this clause is contrary to the opinion of Australia or not. For the House, in such conditions, to seriously discuss in a Bill like this a clause of such vital importance is entirely without precedent, and if a precedent of this kind is to be made it ought not to be made without a protest in the House itself. When we get to the report stage it may turn out that the Australian Governments do not approve of the action of the delegates, and we may have put before us a fifth and different proposal. I do think that the House has hardly been treated with the respect to which it is entitled in a matter of this gravity. It would have been the easiest thing in the world, if the Colonial Secretary only made this arrangement as late as Saturday last, to have deferred the Committee on this Bill for a few days, until we had an opportunity of knowing what the opinion of Australia was, and also some opportunity of considering ourselves these difficult and legal considerations. For my part I entirely decline at this stage to commit myself to the clause as it stands. I claim for myself, and I think every Member of the House is entitled to it, complete freedom, at a later stage, to consider it upon its merits. I do not think that we should be doing our duty if we allowed this occasion to pass without making this protest against a proceeding which I think is entirely without precedent.

MR. J. CHAMBERLAIN: I sympathise very much with a great deal of what has fallen from the right hon. Gentleman as to a certain inconvenience attending the proceedings with regard to this Bill, and I quite agree with him that the circumstances are entirely unprecedented. I quite agree with him also that if we were dealing with a Bill of our own, an English Bill, even a Private Bill, we could not think for a moment of pressing for a conclusion this afternoon, but would readily

accept a suggestion coming from any quarter of the House for a further postponement. I admit all that. But how the right hon. Gentleman, who knows the circumstances of this case, and knows exactly what are the difficulties with which I have had to deal, can accuse me of want of respect to the House because I have adopted the course I have taken, I cannot possibly conceive. I have taken this course simply because I have been requested to do so by the Australian delegates. To the right hon. Gentleman that may be an insufficient authority, but for those who again and again in these proceedings have called upon us not to flout the opinion of the whole of the Australian people, not to flout their representatives, not to insult them by suggesting amendments to their Bill, to say to us that no attention whatever should have been paid to the unanimous request of the Australian delegates, even at this late period, seems to me a very inconsistent argument.

MR. ASQUITH: What I said was that surely the House of Commons is entitled to have a few days to consider the proposal.

MR. J. CHAMBERLAIN: I entirely agree that if the House of Commons desires a postponement they must have it. Nobody would think of rejecting anything like a general desire of the House of Commons, or a desire expressed by the leaders of the Opposition, in regard to such a matter. But, of course, in that case they will understand that they are taking upon themselves the responsibility of delaying the measure. Whether that in itself is a serious matter or not is for them to consider. We press it, not because we have the slightest interest as a Government in pressing it, but because we thought it was our duty to put before the Committee the wishes of the Australian delegates in the matter. Let me say that I should not, perhaps, have made myself the channel for the expression of that wish if I had not been under the impression, which nothing the right hon. Gentleman has said has removed, that it was the general desire of the House to treat this Bill as chiefly an Australian matter. If the House proposes now to adopt a different view with regard to it, why, of course, I admit that the complication of this particular question and

the complication of the whole Bill justifies a much longer delay than we have thought of. I was certainly under the impression that, if I could produce to the House *prima facie* evidence that an arrangement had been arrived at which on its merits we could approve and which had every prospect of commending itself, not merely to a portion of the Australian colonies, but to the Australian colonies as a whole, in that case we should have the assent of the House for taking the present step. I have to acknowledge the spirit in which the matter has been dealt with by the hon. and learned Gentleman the Member for Dumfries, but still I do venture to differ from him, because he expressed a desire that even at this late stage we should accept the original Bill as presented to us by Australia.

SIR R. T. REID: If you cannot get an agreement out of them.

MR. J. CHAMBERLAIN: I hope we have got an agreement otherwise. But he will permit me to say that in my judgment if we were now to go back to the original Bill it would be the most unsatisfactory course that we could possibly take, that it would be the course which would meet with the most resistance in Australia. I think the House will easily see that a matter which even in our short discussions has proved to be highly technical is not one which can be considered to have been before the minds of all the Australian people when they passed the referendum on the principle of the Bill. Now that it has been discussed, it must be evident to everyone that there is a very large and growing opinion in favour of retaining an unrestricted right of appeal. I own that my conviction has always been that the Australian people never intended the Bill to be taken or left by this House, to be swallowed whole or to be rejected, and that there was no alternative for our consideration. On the contrary, everything that I have heard leads me to believe that it was supposed we would give our best consideration to the Bill, and that if we found in it anything that we thought to be of sufficient importance to merit reconsideration we should not hesitate to put our views before the Australian people; and, as far as I can gather, I believe our efforts in that direction have been thoroughly

appreciated. The hon. and learned Gentleman said something about the possibility of exciting displeasure. I have not seen a trace of displeasure. On the contrary, there is a thorough appreciation of the spirit in which we have hitherto dealt with the matter. Our main object has been so to pass this Bill finally as to secure the practically unanimous assent of the Australian Parliaments. The recent alterations, and, as I have said, the first alteration that was proposed, gave us all that we thought it necessary to insist upon. These subsequent alterations are suggestions that have come to us from Australia, and I am not at all ashamed of proposing them again and again. I am not at all touched by the irony of the right hon. and learned Gentleman. He talked about a fourth proposal in a few weeks, and said there may be a fifth. [Mr. ASQUITH dissented.] Well, he commented upon it in what I understood was a spirit of deprecation.

MR. ASQUITH: Only as an argument for deliberation.

MR. J. CHAMBERLAIN: I do not deny the possibility, and I shall not be in the least ashamed of coming again with a fifth or a sixth suggestion if it is made to me from Australia. If I have reason to believe that other alterations will still further recommend this Bill as a whole to the Australian people, it will be my duty to submit them, even one after another, to the House. As regards time for deliberation, I hope hon. and right hon. Gentlemen opposite will see fit to hasten proceedings by allowing this stage, at all events, to pass practically unquestioned. We shall be prepared to allow time for further deliberation on the Report stage, which we will postpone to a date which will be convenient to gentlemen opposite. The proposal to extend the powers of the Federal Parliament made by the hon. Member for the Oxford University is one with which I entirely agree. The Federal Parliament under the Constitution will have power to legislate for limiting the right of appeal, although any legislation of the kind will have to be reserved for Her Majesty's pleasure. My hon. friend says we might still further enlarge the legislative capacity of the Federal Parliament by allowing them to extend the right of appeal as

well as to limit it. Upon that point, as I have said, I agree with him; but at the same time I should not like to introduce the alteration at this stage, or without knowing whether such an increase of legislative power would be likely to be in consonance with the wishes of the Australian Governments and people. But I will take care, as far as I can, to make myself acquainted with the views of the delegates, at all events, on the subject, and if I should find they have no objection I should be very glad to introduce the change on the Report stage. I think there is only one other word I need say. I disagree from the hon. and learned Member for Dumfries, and still more from the hon. and learned Member for Haddingtonshire, as to the view they take of the respective effects of the original Bill and of the Bill as it will stand when we have amended it. The hon. and learned Member for Haddingtonshire actually puts forward the view that our Amendment restricts the right of appeal more than the original Bill. He says that upon a hasty review of the clause as now presented. Let me point out that the whole of his argument applies to the previous proposed Amendment as well as to the Amendment on the Blue Paper, and, although it has been before the people of Australia for the last three months, not a single word was heard from anyone to justify that view. The hon. and learned Gentleman, as far as I know, stands absolutely and entirely alone. The hon. and learned Member for Dumfries did not go so far, but he did consider that the original Bill made a slight limitation and restriction of the right of appeal. That is absolutely contrary to the view taken unanimously by the leading judicial authorities in Australia. Whether it is right or not to make the alteration is another matter. When I am told that the Amendments which we have now made do not affect that restriction, I think I can best answer that by saying that by those Amendments we have placed the question of appeal, with one exception, in precisely the same condition in Australia as it is in Canada. The hon. and learned Gentleman approves of the condition of things with regard to appeal in Canada. Let me point out that under the new Amendments we shall be acting in precisely the same way in Australia as in Canada, except that in the limited number of cases where constitutional

questions are tried in the High Court leave to appeal will be given in the case of Australia by the High Court, whereas in the case of Canada leave to appeal is given by the Privy Council. That is the only difference. Having brought the right of appeal in Australia so completely or nearly in accord with the right of appeal in Canada, I think we have secured a very great result, and I am only glad to find that in doing so we have the support apparently of the Australian people.

MR. COURTNEY (Cornwall, Bodmin): I do not think my right hon. friend has treated the House with any discourtesy, but he had a matter of the most difficult character to deal with. Nor do I think the House of Commons is at all discredited by the way in which this business has been conducted. I think that in this matter we should defer entirely to Australian opinion in all matters which do not touch the interests of the Empire at large. But I urge my right hon. friend to consider whether it would not be better to assent to report progress at this stage, so that we may have some time to consider the exact meaning of this Amendment which we have seen to-day for the first time.

SIR H. CAMPBELL-BANNERMAN (Stirling Burghs): I wish to say a few words, not on the main question of the merits of the proposed clause, but on another point. The right hon. Gentleman has expressed a very strong opinion to the Committee. He has said that the Government will postpone for a short time further the consideration of the Bill at this stage, if the Committee desire; but he has referred to some evils—unknown evils to us—that would arise, and has implied that it would be a great disappointment and calamity if some short prorogation were allowed. I do not understand what the meaning of that may be. I remember it was on the 14th May that the Bill was read a second time, and the stage which really became the critical stage—for there was no opposition at the Second Reading—was postponed for some time. Considerable surprise was felt at the length of the interval which the right hon. Gentleman allowed, because there was nothing in the merits of the case, in the facts themselves, which made so long an interval necessary. But now, on the

morning of our consenting to consider the Bill, we have this new clause put before us, and we are told that it is the result of an agreement between the right hon. Gentleman and the delegates, but neither the delegates nor the Minister know what the feeling of Australia is and what the opinion of the Australian Governments is. That is *prima facie* a very strong case for postponing the consideration of the clause. The right hon. Gentleman adopts a tone which is, I think, entirely satisfactory to the House, when he says that, subject of course to a due regard for our interests, his great desire is to do whatever the Australian people wish—that he will change this clause again and again if he finds that it will so better suit the wishes of the Australian people. That we understand and appreciate, but that is another reason for delay. We do not know what the feeling of the Australian people is. The whole of the arguments appear to me to be in favour of some further delay—a short delay it may be—not only for our convenience, that we may prepare speeches and elaborate arguments, and for the dignity and propriety of the proceedings of this House, but for the sake of our making a good job of this matter when we undertake it. If we claim to be desirous of doing what the Australian people wish, we ought, first of all, to know what they desire. For all these reasons a short delay would not appear to be out of the question, and I am rather surprised that the Government have not themselves proposed it. On the other hand, the right hon. Gentleman was almost severe in his declaration of the great gravity and responsibility which would rest upon us if we invited this delay, and consequently I hesitate to put what is my strong opinion into the form of an actual request.

MR. MACLEAN (Cardiff): I certainly do not desire to say a word in disparagement of the skill and patience shown by the right hon. Gentleman in managing the delicate negotiations in reference to this Bill, but I think the whole drift of the debate to-night has been in favour of delay, and there does not seem to be very much weight in the arguments used by the right hon. Gentleman against delay. The right hon. Gentleman has said he wanted to do all he could to meet the

wishes of the Australian delegates. But what difference would a short delay make, seeing that it is in order to ascertain the opinion of those speaking for Australia? I am quite sure that after such a delay the debate on the Bill could be concluded in half an hour. Everybody in England is only too anxious that this Bill should be passed and to do anything to promote the happiness and prosperity of the people in Australia. When it was first brought forward it was with every prospect of it being passed, and, considering the splendid spirit shown by the colonists in South Africa, the people in this country should have been only too ready to show their appreciation. The Australian delegates came over boasting, as they had a right to boast, that they were the representatives of the people and Parliaments of Australia—of all the constituted authorities of Australia. Every one of them agreed as to the Bill that it ought to be passed by the House. The Colonial Secretary took up a position of complete antagonism to the measure. It was a matter for regret that the Colonial Secretary, instead of accepting the opinions of the constituted authorities of Australia, had endeavoured to obtain an opinion in Australia in favour of himself. He had adopted all the arts peculiar to the political agitator. We were told that this was the one last link in the Imperial union of the whole Empire—that it was the first step towards Imperial Federation. Anyone who had given any serious thought to the question of Imperial Federation among the scattered members of the Empire of Great Britain must know that it is a perfect chimera, and that there is no colony in the Empire which to-morrow would accept the authority of any federated Assembly sitting in London to impose on them any control or any taxation whatever. The great aim of the people of Australia has been to break away from the last vestige and relic of the ill-omened domination of Downing Street in our Colonial Empire.

THE CHAIRMAN: I would remind the hon. Member that the discussion is limited to the Amendment before the Committee.

MR. MACLEAN: Perhaps I may be permitted to point out why the Australian

delegates protested against the scheme of Her Majesty's Government, however it might be modified. It was that they did not think it was one suited to the genius of the Australian people, and they used those eloquent and manly words which I think are strictly appropriate—

"The delegates reflect with pride that there are sentiments which will constitute eternal 'links of empire,' but are quite unable to understand how there can ever be the least hope that we can merely by insuring uniform interpretation of the law throughout the Empire, facilitate that unity of action for the common interests which will lead to a real federation of the Empire. The 'unity of action' and the uniform 'interpretation of the law' seem to them wholly unrelated and certain to remain so. The consciousness of kinship, the consciousness of common blood, and a consciousness of duty, the pride of their race and history, these are the links of empire, bonds which attach, not bonds which chafe."

These are the sentiments which have inspired the people of Australia, and I think we may rely more upon them, and feel that in the moment of emergency or danger the Australians will come to our side animated by the common sentiments of race, religion and language, by common sympathies, and by common traditions.

MR. J. CHAMBERLAIN: I should not oppose a motion for the adjournment proposed from the opposite side with the authority of the right hon. Gentleman the Leader of the Opposition. I confess that, although he does not venture to make the request, I have a difficulty in distinguishing between a formal request and the language in which he conveyed his opinion on the matter.

SIR H. CAMPBELL-BANNERMAN: I was frightened out of it by the right hon. Gentleman.

MR. J. CHAMBERLAIN: I was not aware I was so terrible in your opinion. I understand it is the opinion of the right hon. Gentleman that we should not proceed further, although I very much regret that it should be his opinion. I do not feel justified in offering any opposition to reporting progress, and in that case I would suggest that we continue the discussion on Thursday next.

Committee report Progress, to sit again upon Thursday.

HOUSE OF COMMONS.

Thursday, 21st June, 1900.

COMMONWEALTH OF AUSTRALIA
CONSTITUTION BILL.

Considered in Committee.

(In the Committee.)

[Mr. J. W. LOWTHER (Cumberland,
Penrith) in the Chair.]

Clause 5 :—

Amendment again proposed—

"In page 2, line 14, to leave out from the word 'Notwithstanding,' to the word 'State,' in line 18, both inclusive."—(Mr. Secretary Chamberlain.)

Question again proposed, "That the words proposed to be left out stand part of the clause."

THE SECRETARY OF STATE FOR THE COLONIES (MR. J. CHAMBERLAIN, Birmingham, W.) : I have to ask the permission of the House to make a correction of a statement which I made on Monday last in dealing with this Amendment. I then said, or I am reported to have said, that I had received no official communication from the Government of the four States of Australia in reference to the proceedings which had taken place since the introduction of this Bill, and that, up to the present, I was not officially made aware of the opinions of the Governments of the four States. I find that that was a mistake. It would have been more correct to say that I had no public official statement, but I have been reminded by my hon. friend Mr. Barton of a matter which escaped my memory at the time—namely, that after the first arrangement was come to with the delegates I received on 25th May from the Government of New South Wales a telegram, which I thought then was confidential, but which I am now told was not intended to be confidential, to the effect that the Prime Ministers of the four States of Victoria, New South Wales, Tasmania, and South Australia agreed to the arrangement which had been come to between the delegates and myself. I desire to state this, because the previous statement might have led to a misunderstanding and to the supposition that the delegates were

acting without the authority of their Governments. Of course, I did not in the least intend to convey that; but I admit that my words were open to that construction, and I have to apologise to the Committee and to the delegates for the slip. It has, however, no particular relevance to the present Amendment. When we adjourned on the last occasion I had informed the Committee that I had communicated with the Governments of the different colonies in order to ascertain, if possible, what their views were with regard to the new arrangement which had been come to. At that time I had no complete account of their opinions. I have since received telegrams which I think I had better read to the Committee. The first is from Lord Beauchamp, New South Wales, received 20th June :—

"The Premier informs me that Victoria, Tasmania, and Queensland agree to the compromise in connection with Clause 74. New South Wales Parliament, now sitting, has expressed wish that altered clause should be submitted to it."

The next is a telegram from Lord Tennyson, South Australia, dated 20th June—

"Ministers reply as follows to your telegram 19th June :—They do not think that any difficulty will be caused if Imperial Parliament resolves to amend Bill as now proposed."

Lord Gormanston sent a telegram on 19th June as follows—

"Your telegram of 16th June received. My Government are quite satisfied with the clause set forth therein as the best under all the circumstances of the case."

With regard to Queensland, I have received a letter from Mr. Dickson, dated 19th June, in which he says—

"Sir,—Referring to my letter of the 15th inst. and to our later interview of Saturday afternoon, I now beg to inform you that I have since received from my Government the following cablegram :—'Full text of new Clause 74 sent through Tennyson to Australian Governors received. Consider it great improvement on previous Amendment, and request you will not offer any objection to it.' Consequently I will now accept on behalf of the Government of Queensland the new Clause 74 as presented to the House of Commons yesterday, and trust it may be passed unaltered. I desire, however, to record on behalf of my Government and of myself that we should have greatly preferred to have had the Bill as introduced by you passed without Amendment. May I suggest that further consideration be directed to the bearing of the words 'final and conclusive' in Clause 73, page 16, lines 27-28, in connection with new Clause

74? I cannot conclude without expressing to you my gratitude for the clear, straightforward manner in which you placed my attitude before Parliament in your speech of yesterday evening, and tendering you, on behalf of the Government of Queensland, our fullest appreciation of the great patience, care, and courtesy with which you have endeavoured successfully to reconcile views at first sight irreconcilable; trusting also that these long negotiations may now be considered as satisfactorily concluded."

Lastly, I received from the officer concerned in administering the government of Victoria a telegram dated the 21st of June, as follows—

"Ministers entirely approve clause now offered, and I am desirous by them to convey their cordial thanks to you for your great trouble and kindly interest in our Australian matters, and to express our congratulations to you on having arrived at a successful settlement."

Now I think I may say that I have very great satisfaction in once more pressing for the Amendment which has been laid before the Committee. I do not myself regret in the least the time that has been spent in what I have heard described in some quarters as "muddling negotiations," but which have resulted in bringing absolutely into line the colony of Queensland, which was in favour of plenary appeal, and the colony of South Australia as representing the extreme views with regard to the restriction of the right of appeal. So far as four out of five of the federated States are concerned, the proposed arrangement has been accepted by all the delegates, thoroughly and cordially accepted. So far as New South Wales is concerned, we have still to wait for an expression of opinion on behalf of that colony, but in any case four out of five of the colonies have expressed their opinion, and, if I may venture to advise the Committee on the subject, I should say that, looking at the reports we have received from non-official sources, there can be very little doubt that they are equally acceptable to the vast majority of the people of New South Wales. They are equally acceptable to Her Majesty's Government. By this arrangement we have obtained everything for which we thought it our duty to contend, speaking on behalf of Imperial interests that are non-Australian. I have to repeat, after the most careful consideration, that we have secured in connection with the Australian federation precisely the same powers and rights of

appeal which exist in the case of the great Dominion of Canada, with this trifling exception, which I am almost inclined to think is an improvement, that in certain rare cases the leave to appeal will be granted by the High Court in Australia, and not by the Privy Council. I have said that I think that that may possibly be an improvement, for this reason—that where the leave to appeal is to be given by the Privy Council it involves two applications to that body, which necessitates two sets of costs. The appellant has first to ask for leave; and, leave having been given, the merits of the case have to be tried. In this case leave will be settled by the local Court without the necessity of appealing. This Court, I imagine, will be considerably less expensive, and only the merits of the case will be tried by the Privy Council. I do not think I need refer to anything else except to say this—that my hon. and learned friend the Member for Haddingtonshire took me by surprise, in fact he astounded me, when he endeavoured to put forward the argument that either of these arrangements which we have recommended to the Committee as distinct from the original proposals of the Bill was really more restrictive of the right of appeal than the original Bill. I do not intend to argue with my hon. and learned friend, but what I have to say perfectly clearly is that the whole of Australia differs from him. Queensland—which, as I have said, was in favour of the plenary right of appeal—and the other colonies are in favour of a restricted right of appeal, but all of them have accepted the arrangement with the understanding that it very much enlarges the right of appeal which was conceded by the original Bill, and apparently they are now satisfied to accept the arrangement proposed by Her Majesty's Government as being in the interest of Australia as well as in the interests of this country.

MR. HALDANE (Haddingtonshire): I wish to make one or two observations in reference to what has fallen from the right hon. Gentleman. It is quite true, as he said, that the Australian colonies have accepted this arrangement, but our contention was not in relation to anything which the Australian colonies were fighting for; our contention was that that should be preserved which the Aus-

tralian colonies had already conceded. Our point was made in the interests of the Queen's dominions outside Australia, including those of New Zealand. The right hon. Gentleman was no doubt correct when he said that he had satisfied the Australian colonies with this clause. He has done so; but these colonies have been willing to concede something more than the right hon. Gentleman has got—namely, that where the interests of someone else outside themselves were in question the validity of those interests should be subject to appeal to the Privy Council. The right hon. Gentleman has said he has obtained everything which the Canadian Constitution gives with a trifling exception. What is that trifling exception? It is that there can be no appeal whatever to the Privy Council, except with the leave of the new High Court of Australia. Something like that question arose when the Canadian Constitution was under consideration, and the Canadian Supreme Court showed a tendency to take the view that it was the proper court to dispose of all questions of constitutional controversy, and that the Privy Council was not the place to appeal to. The Supreme Court of Canada conceived that its decisions should lay down the law finally as to questions arising between the Dominion and the provinces. What would have been the position of the provinces to-day if it had been left to the Supreme Court of Canada to say whether or not there should be an appeal? Does anyone imagine they would ever have got leave to appeal? I take it the Supreme Court, taking the view that it was properly the final court of appeal, would have refused leave. We do not want to run that risk here. The right hon. Gentleman talks of having settled with the Australian colonies, but there are other places to be dealt with besides the Australian colonies; New Zealand, for instance, which has large interests in this matter. The following letter, dated 19th June, 1900, deals with this matter. It was addressed to the Under Secretary for the Colonies by the Agent General of New Zealand.

"Sir,—I have the honour to further address you on the subject of the Commonwealth of Australia Constitution Act.

"I have not had the opportunity of perusing any authenticated copy of the Amendment of Clause 74 which it is now proposed to insert in the Bill. Assuming, however, that the version published in *The Times* newspaper of this morning is correct, it appears to me that under

it the position of outside States which may become involved in litigation with the Commonwealth or one of its provinces is open to doubt. I have read with attention the speech of the Attorney General, Sir Robert Finlay, but there seems to be at least a difference of opinion as to whether the right of appeal to the Privy Council may not be taken away in cases which involve at once the constitutional position of the Commonwealth in regard to its provinces and also the interests of some outside community. It is the earnest desire and request of the New Zealand Government that the present rights which our colony and colonists enjoy of appealing to the Privy Council may not be taken away, diminished, or left in any doubt whatever.

"I have, therefore, the honour to ask that her Majesty's Government may be pleased—if the point before referred to seems, on reflection, to admit of doubt—to insert in the clause such language as may put the matter beyond the possibility of controversy.

"My Government confidently believes that it is not the intention of the right hon. the Secretary of State for the Colonies to allow the existing rights of any of Her Majesty's subjects outside the proposed Commonwealth to be impaired or abridged.

"The Australians themselves have never set up any claim to do this, and the request of the New Zealand Government would, therefore, seem to be in accordance with the manifest wishes of all parties.

"I am, etc.,

"W. P. REEVES."

That seems to represent the exact position, and reference to the Bill will show that in many respects the interests of New Zealand are likely to be vitally affected in the matter of trade, commerce, fisheries, etc. What objection can there possibly be to introducing this safeguard? Why not add words to the end of Clause 74—words which will restore the position of things before the unfortunate Amendment was made? To make the position of New Zealand clear I propose, when we come to Clause 74, to move to add words to provide that with respect to any question affecting the public interest of any part of the Queen's dominions outside the Commonwealth, the Privy Council may give leave to appeal. That seems to me to be most important, because New Zealand will not have any representative in the first instance at all in the High Court, certainly not before federation, and it would undoubtedly prevent the friction which did arise in the case of Canada. I can see no possible reason why the right hon. Gentleman should not, at any rate, consider these words, thereby giving that reasonable

satisfaction to the people of New Zealand to which they are entitled.

MR. HENNIKER HEATON (Canterbury): May I ask the right hon. Gentleman whether Western Australia has been considered?

MR. J. CHAMBERLAIN: Yes, Sir, I have communicated with Western Australia. It must be borne in mind that in the first instance we can only recognise directly the federating States. The opinion of others interested is important, but we cannot guide our decision by those outside the Commonwealth. I have received the following communication from the officer administering the government of Western Australia (received June 20th)—

"Ministers of opinion last proposal as to appeal of Privy Council preferable to proposal to allow Executive Government decide question. But Ministers strongly of opinion appeal from High Court should be by right and not by permission. Ministers think Federal Parliament should not have power to limit matters of appeal, and that it should be made quite clear that existing right of appeal to Privy Council is maintained."

That is to say, Western Australia, like Queensland, and perhaps others who have not been communicated with in this matter, is in favour of my original proposal; but the arrangement which we have come to, and by which all are brought into line, is accepted.

MR. MACLEAN (Cardiff): I am sure both sides of the House will receive with a great deal of satisfaction the announcement made by the right hon. Gentleman that this prolonged quarrel has been now brought to a close, and that we may pass the Bill with the assurance that it will be satisfactory to the people of Australia. The right hon. Gentleman says that the delegates are satisfied with his latest arrangement, and he also says that it is perfectly satisfactory to Her Majesty's Government. I am rather surprised about that latter statement, because it seems to me that the right of appeal with the restrictions imposed by the present Act will become quite illusory. The appeals to this country have been very few, and not on matters of public interest to Australia. They will become fewer and more rare in the future, and in the natural course of things they will disappear altogether. There are very few cases at

all likely to come to this country which are of interest to the public of Australia. It is said that certain questions affecting foreign affairs may be brought up and referred to the Judicial Committee of the Privy Council—appeals, for instance, in regard to New Caledonia and the islands possessed by Germany—but questions of that kind would never come into court. They would be brought to the notice of the Executive Government of the day. For instance, we have heard of cases with regard to the French shores of Newfoundland. No one would suggest that a question of that sort should be referred to the Judicial Committee of the Privy Council. It is always a matter for negotiations between the French and British Governments. I think that this right of appeal will very soon, under the Act, fall into disuse, and I am perfectly convinced that that is the best thing which can happen to it.

SIR WILLIAM ANSON (Oxford University): I have very great diffidence in rising to attempt to controvert the arguments of the hon. and learned Gentleman the Member for Haddingtonshire. I think, however, that the hon. and learned Gentleman has not sufficiently distinguished between the character of the constitution proposed in this Bill and the Canadian constitution. In the latter the Dominion and Provincial Legislatures have mutually exclusive powers of legislation. Here each State in the Commonwealth will have the fullest powers of legislation, affected only by the Colonial Laws Validity Act and the power of reservation and the ultimate power of disallowance. The Commonwealth will have limited powers of legislation, and therefore there can be no question of difficulty as to the limits *inter se* of the constitutional powers of the Commonwealth and the States.

MR. HALDANE: Will the hon. Gentleman permit me? He has overlooked Clause 109, which states that when the law of the State is inconsistent with the law of the Commonwealth, the latter should prevail.

SIR WILLIAM ANSON: I have not overlooked that clause. As long as the Commonwealth Parliament does not exceed its powers its legislation would countervail any legislation of a State; if it

exceeds those powers the question becomes an Imperial one. I venture to think that difficulties are not likely to arise in matters of legislation, but rather in matters of executive action, and it is in that direction we have to look mainly, if not entirely, for the questions which may come to be decided, as between the Commonwealth and the States, by the High Court. If that is so I venture to think the hon. and learned Gentleman's fears are unfounded, and that the compromise, or the arrangement, or whatever else it may be, may be accepted by this House without any fear of trenching on Imperial interests or the interests of the colonies.

MR. ASQUITH (Fifeshire, E.): I express no opinion on the controversy between my hon. and learned friend and the hon. Gentleman opposite. I rise for the purpose of saying that we are in a much more favourable position for dealing with this question now than we were on Monday last. In the interval the right hon. Gentleman the Secretary for the Colonies has had an opportunity of ascertaining the views of the colonies concerned, and even if this clause were open to more criticism than is the case, I think the general opinion of the Committee now is that having received the assent and approval of the colonies concerned, it ought to be carried into effect.

THE ATTORNEY GENERAL (Sir ROBERT FINLAY, Inverness Burghs): I desire to say a very few words in explanation of the effect of this clause, by way of removing the apprehensions expressed by the hon. and learned Gentleman the Member for Haddingtonshire. I cannot but feel that these apprehensions are based on some failure to appreciate the true effect of the clause as it now stands. The first thing I wish to make perfectly clear to all concerned is this—that it will rest with the Privy Council to determine whether or not a particular matter falls within the restriction of this particular clause. The High Court will have no power to settle whether a particular matter falls within the restriction. On application to the Queen in Council the Judicial Committee would look into the whole matter, and if they were of opinion that it did not fall within the restriction, leave to appeal would be given whatever the opinion of the High Court

might be. I cannot help thinking that the apprehensions expressed by the hon. and learned Gentleman with reference to New Zealand are based on some misapprehension as to the essential differences between the Australian Bill and the British North America Act. It is perfectly true that Article 51 of this Constitution confers many powers on the Parliament of the Commonwealth which are almost identical in terms with those enumerated in Section 91 of the British North America Act. But in addition to the powers there enumerated there are certain most important powers not now enjoyed at all by any of the Australian colonies, such as powers with reference to foreign affairs, to fisheries beyond the territorial limits, and other matters of that kind. These powers are newly conferred on the Commonwealth, and with regard to them it will not be a question as between the Commonwealth and the States as to their distribution, because the States will possess, at all events, the most important of these new powers, including those in respect to which controversy is likely to arise. It will be a question not of distribution, but as to whether certain powers in respect to these matters have or have not been delegated to the Parliament and Government of the Commonwealth. So that there is absolutely no restriction by this clause as to an appeal to the Privy Council as to whether or not these powers have been so delegated. As the Bill came from Australia it might exclude absolutely any appeal whatever to Her Majesty in Council in these matters. The peculiar condition contained in the clause as it came from Australia—namely, if “the public interests of any other part of Her Majesty’s dominions” was concerned—is now set at rest by the settlement arrived at, and the right of appeal to Her Majesty in Council is introduced as regards these new powers not hitherto enjoyed by any of the colonies. Now we come to another aspect of the case to which the hon. and learned Gentleman referred—that is, where a State has enjoyed certain powers, and where powers in respect of these matters have been conferred by this Bill upon the Parliament and the Government of the Commonwealth. Now, what I would direct the attention of my hon. and learned friend to is this: the scheme of this Bill is essentially

different from the Canadian Bill. The Canadian Bill conferred, in respect of certain matters, exclusive powers upon the Parliament of the Dominion; in respect of certain other matters, exclusive powers upon the Legislatures of the Provinces; so that the form of the question which arose was this—whether or not the one or the other Parliament would be acting *ultra vires* if it meddled with a matter exclusively assigned to the other. That is not the scheme of this Bill at all. What has been done is this: on the Parliament of the Commonwealth are conferred, in respect of a number of matters, concurrent powers with those which have been enjoyed, and will still be enjoyed, by the Parliaments and the Governments of the States. The States in respect of these matters will still retain their powers, and the only question which can arise is as to whether any Act of the State Legislature will be *ultra vires*. In regard to Article 51 no controversy can arise as to any power having been taken away from the State Legislatures, because the States will retain all the powers they have enjoyed. The question that will arise is a totally different question. In the immense majority of cases it would not be whether the Commonwealth Parliament or the State Parliament had power to legislate on the matter, because both undoubtedly had. The scheme of the Bill is different. The question that would arise is this:—Under the 129th article of the Constitution, if the law of the Commonwealth and the laws of the State were in conflict, the law of the Commonwealth prevailed. The question would not be as to the relative powers of the Commonwealth and the States *inter se*, for in a question of the construction of the Commonwealth statute with the State statute, if they bore on the same subject, the Commonwealth law prevails. That is not a question which will be affected by the terms of the arrangement now arrived at. An appeal on the question of the construction of a statute will be absolutely free as at present. That is to say, if Her Majesty in Council thought fit to grant leave of appeal there would be no conflict. My hon. and learned friend referred to a very interesting case affecting a Chinaman, and he asked whether the State Legislature had not acted *ultra vires* in legislating on that subject. In Australia that question cannot arise, because no jurisdiction is conferred

on the Commonwealth Parliament to legislate with regard to aliens, yet the State Legislature would retain all its powers, because the powers are concurrent. In regard to the other case mentioned by my hon. and learned friend as to rivers and lakes, the great rivers and lakes of America concern another Power than the Dominion of Canada; but no such question could, of course, arise in Australia, and therefore it could not lead to complication. I would point out, moreover, that the Amendment as proposed does not bear on an appeal in any class of cases whatever. As the Bill came from Australia, in certain classes of cases resting on the interpretation of some doubtful and obscure words there was no authority or power to give leave to appeal from the High Court to the Privy Council. There could be no appeal from the High Court to the Privy Council on any constitutional question unless it related to the public interests of some other part of Her Majesty's dominions. Now the effect of that was that in an excepted class of cases they set up two Courts with co-ordinate jurisdiction, and as to that particular class of case the High Court and the Privy Council are co-ordinate with no possibility of appeal from the one to the other. It might have been argued on the Bill as it came from Australia that the High Court in these cases would not have been bound by the decision of the Privy Council. No such contention can possibly be raised under the clause as it is now settled, because there is the power of appeal to Her Majesty in Council in every case. The only difference is that while in the immense majority of cases leave to appeal is to be granted as heretofore by application to Her Majesty in Council, such special leave in one small class of cases—which affect Australian interests almost exclusively—is to be granted from the High Court, and the Privy Council is recognised as the Appellate Court. It has been asked, if this leave is to be got from the High Court, on what principles will the High Court act in granting or refusing the application? I confess that I have some confidence in the action of the High Court. It has been the glory of our race all over the world, that the Judges in every part of the United Kingdom and in every British Colony have acted absolutely independently of political considerations. As these Judges have acted in the past I

believe they will act in the future, and I think it will be found that there is no ground for any distrust or apprehension as to the way in which the High Court will exercise the powers with which it is entrusted in this very small and special class of cases as to whether there shall be an appeal to the Privy Council if the interests of any other part of Her Majesty's dominions are affected. It is very difficult indeed to see how a question of the distribution of powers between two Australian States could affect the interests of another part of Her Majesty's dominions. But if by any human possibility such a case should arise, that is a special reason for allowing an appeal, and it is much better to have a provision in this elastic form instead of trying to find a form which will stand for all time without any power on the part of any Court to vary it. I would suggest to the Committee, and all those interested in the matter, that it may be left in the shape which it has now assumed—a shape that has given satisfaction alike to all those in Australia who approved of a limited appeal, and those who asked for an unrestricted appeal.

MR. BRYCE (Aberdeen, S.): I entirely assent to the argument addressed to the House by my right hon. and learned friend that in cases which arise as to the powers of the Commonwealth Parliament and those of the State Parliaments, the decision should be left to the Privy Council; in other words, it would be for the Privy Council to say whether the matter ought to come before it or not by way of appeal. In regard to the difference between the Canadian and this Constitution, that is not material; but I think my hon. and learned friend goes rather too far if he suggests that it is absolutely impossible that a Constitutional question involving the public interests of some other part of Her Majesty's dominions can arise, where the question is, *prima facie*, one between the Constitution of a State and the Constitutional powers of the Commonwealth.

SIR ROBERT FINLAY: I did not say absolutely impossible. I think it is extremely improbable, and that it would be dealt with by the power which the High Court has to allow appeal on cause shown.

MR. BRYCE: I do not suggest that it is a probable case, but my hon. and learned friend the Member for Haddington was quite right in pointing out that this is a case that might arise, and that if it did it would have been better to have retained the words "public interests," which the original draft of the Australian Constitution contained, and which set of words had been used by the Privy Council itself in a famous decision. Probably it was from that decision that the words "public interests" in the original draft were drawn.

SIR ROBERT FINLAY: The words are "public interests of some other part of Her Majesty's dominions."

MR. BRYCE: It is said that these are vague words. They are wide words, and the Privy Council would have given them a very wide interpretation. After all, there is not very much difference between us, and I pass on to enter a *caveat* against the last argument of my right hon. and learned friend. He suggested that under the Amendment the Committee is now discussing the High Court of the Commonwealth of Australia will not be a Court of co-ordinate jurisdiction with the Privy Council, and that it will be bound to follow the decisions of the Privy Council. I cannot feel by any means so clear as my right hon. and learned friend on that point, because we are here making a special provision for a special case. From the general right of appeal to the Privy Council to be granted we are excepting by statute one particular class of cases, questions involving the construction of the Constitution of the Commonwealth. Surely it will not only be within the power of, but also the duty and the right of the High Court to give full effect to that provision of the Australian Constitution, and to say, "We are in this particular matter made a final Court of Appeal. In all other matters we are undoubtedly a subordinate Court, unless in a particular matter we are made a Court of co-ordinate jurisdiction." They would say, "The only appeal is to lie from us, where we are satisfied there is some special reason; we are bound to carry out the intention of the people of Australia and of the Imperial Parliament in not going beyond the express provision; they have given no appeal unless special reasons, in our opinion, exist." I

think, therefore, that it will be open to the High Court in future to hold that in this matter they are a Court not of subordinate jurisdiction but of co-ordinate jurisdiction. I cannot assent to the argument that, because they are subject to appeal in other cases, they are subject to appeal in this case also.

SIR ROBERT FINLAY: They are subject to appeal in this case also; the only question is whether that appeal should be allowed and whether a special authorisation should exist.

MR. BRYCE: Excuse me; it is whether they have it in their power, if they so think fit, to depart from the position given to them of being the final Court of Appeal, and put themselves in the position of a subordinate Court. I think it necessary to enter a protest against the view the Attorney General has taken on this point. I do not suggest that that is a reason why the matter should be thrown into uncertainty again, and I have no desire to raise any difficulty if it can possibly be avoided, but I think it would have been a great deal better if we had passed the Bill as it came to us from Australia. If the words the Australians employed had been used, some difficulties and friction would have been avoided. As, however, we have now arrived at an arrangement which appears to be satisfactory to the great majority of the Australian colonies, I do not think there will be any general wish in the Committee to throw any impediment in the way of the final settlement of the matter.

MR. HALDANE: I am glad that the Government have come to a satisfactory settlement with so many of the Australian colonies. I gather that Queensland would still like a wider appeal, and that Western Australia and New Zealand would like the appeal to the Privy Council to stand as at present. I do not intend to propose any Amendment, but would only suggest that between now and the Report stage it should be considered whether the words which the delegates originally proposed should not be preserved as an independent clause without in any way derogating from what has been done. In that way I think the views and wishes of New Zealand, Queensland, and Western Australia might

be materially assisted. The right hon. Gentleman the Attorney General has shown the few cases in Canada which cannot arise; but he has not shown the number of cases which may arise. I quite agree that the two Acts will be materially different Acts, but the right hon. Gentleman the Attorney General and the right hon. Gentleman the Colonial Secretary must remember that the cases of *ultra vires* under this Bill, although they will arise in a different form, will be just like the Canadian cases of *ultra vires*. The first form of question that will have to be decided would be, "Is the particular statute under consideration within the legislative limits?" That would raise a common form of question under the Canadian Constitution. Then there would be other questions. Supposing the Commonwealth legislated, under this very wide power of legislating, as to fisheries and extra-territorial waters, then, I think, New Zealand may very easily have a question on which it would be right that it should have an unfettered power of appeal. The desire of New Zealand that it should have an unfettered right of appeal seems to me to be only a reasonable desire, and I suggest to the Government, respectfully but earnestly, that they should give more consideration than they have done to the question of maintaining the original words as proposed by the delegates, if necessary in a separate and independent clause. Not one word has fallen from the right hon. Gentleman or the Attorney General to lead us to think that the delegates object to their original words. As New Zealand would not object, and Queensland and Western Australia both apparently prefer some better form of the clause, the old words should still be embodied in the Bill. If they are not, the Government must take the responsibility, and I can only say that we must congratulate the Government on getting as much assent as they have got.

MR. J. CHAMBERLAIN: I do not wish to prevent my hon. and learned friend from having the honours of war, but at the same time, as he has made a further appeal to the Government, I must be permitted to point out that there appears to me still to be an absolute and entire ignorance of the wishes of those he professes to represent. His appeal to us is to insert into this clause or some

other part of the Bill, or to reinsert certain words; and he appears to think that if we did that we should give satisfaction to New Zealand, Queensland, and Western Australia. I beg to say he is entirely mistaken. I do not think either of those great colonies cares one row of brass pins whether we put those words in or not. What do they care about? There is something they do care about; these colonies have not got everything they want. From the very first, as I explained to the House in the introduction of this Bill, Queensland has desired that the plenary right of appeal should be maintained exactly as it exists now, and they desire that no change whatever should be made. That is the position of Western Australia; that is the position of New Zealand. But the position of four out of the five federating colonies has been different; they have desired that there should be more or less restriction of appeal, and under those circumstances we have negotiated. I find myself in a difficulty in following the argument of the hon. and learned Gentleman. What has been his object in the part he has taken in this discussion? When, on the introduction of the Bill, I explained that the Government felt that Imperial interests were so seriously concerned in this matter that they could not give way altogether to the majority of the Australian federating colonies, and that, therefore, as they had been unable to arrange any agreement, they were forced to cut out the clause and to leave the right to appeal as it was before (that is to say, when we were giving to New Zealand, Queensland, and Western Australia, for whom the hon. and learned Gentleman is anxious, all that they were wanting) then the hon. and learned Gentleman got up and said that we were wrong, that he could not agree with us, and that we were in danger of incurring the displeasure of the Australian colonies. But when we come down now and say that all difficulty that existed is now disappearing, that we have amicably come to a unanimous conclusion, which Queensland is content to accept, which all the four colonies have accepted as well, which gives us all for which we ever contended in this House or elsewhere, and which gives to the colonies in Australia all which they severally think to be of importance, then

the hon. and learned Gentleman is dissatisfied, and thinks that we have insufficiently considered the rights of Queensland and New Zealand. I daresay his position is clear to himself, but I am bound to say it is not clear to me. What I wish to impress on the Committee and on all parties to this controversy is that if, as I hope it will be, the decision of New South Wales is in accordance with the decision of the other colonies, we have—thanks very much indeed to the consideration which has been given to the matter and to the friendliness of the Australian delegates, who were appointed by their Governments, thanks to the general reasonableness of all parties and the desire to secure a unanimous agreement—dealt with what undoubtedly was an extremely difficult and complicated question in a manner which, at the end, we can say was satisfactory to all the parties concerned.

Question put, and negatived.

Clause, as amended, agreed to.

Clause 6 :—

Amendment proposed—

“In page 2, line 20, to leave out from the word ‘Act,’ to the end of line 23.”—(*Mr. Secretary Chamberlain.*)

Question proposed, “That the words proposed to be left out stand part of the Bill.”

MR. EDMUND ROBERTSON (Dundee): I think we ought to have some explanation of why they were struck out. They were put in at the instance of the delegates, and perhaps the Attorney General or the Colonial Secretary will be able to tell us why now they should be struck out.

SIR ROBERT FINLAY: My hon. and learned friend will observe that the Bill as it came from Australia contained the definition that “the colonies” should mean “the colonies of Australia.” If it had not been for that definition I should have thought there would be no doubt that the Colonial Laws Validity Act would apply to Australia as it applied to the laws of the Dominion of Canada. It

must be remembered that we are dealing not with one colony, but with the legislation of an assemblage of colonies; and we found, on conferring with the delegates, that it would be more acceptable to strike out the words containing the definition, which they thought were unnecessary.

Question put, and negatived.

Remaining clauses agreed to.

Schedule :—

Amendments made.

MR. MACLEAN, who had the following Amendment on the Notice Paper—

“In page 19, line 30, after ‘exclusive,’ to insert, ‘Provided that any proposed laws for the granting of any such bounties shall be reserved by the Governor General for Her Majesty’s pleasure.’”

said: I put this Amendment on the Paper not with the intention of carrying it to a division, but merely for the purpose of calling public attention to the very great change which the clause makes in the commercial policy of the Empire. Hitherto it has been accepted as the commercial policy of the Empire to have free trade in all these matters; but power is reserved to the Australian Commonwealth to grant bounties on the production and export of Australian goods. I am aware that the whole Bill must be subject to the veto of the Queen in Council; but a veto of that kind is very seldom exercised. I am aware that it would be utterly useless for us to attempt to impose any restraint upon the Australian Commonwealth in these matters. We have given to the Commonwealth everywhere perfect freedom to tax themselves and to govern themselves, and even to enter into treaties with foreign Powers, and we cannot therefore draw a line at a matter of this kind. Personally, I have sufficient faith in the principles of free trade to leave the matter to be settled by the Australians themselves. They will go their own course rejoicing in their own freedom and strength, and we can only hope that, as in the United States, whom we have seen adopt an economic blunder and still remain a prosperous country, a similar fate may be reserved for the Australian Commonwealth. Under the circumstances I do not propose to move the Amendment of which I had given notice.

MR. J. CHAMBERLAIN: The hon. Gentleman is entirely mistaken. This does not introduce any new principle whatever. Any single colony in Australia has already power to grant bounties, and as a matter of fact some of them have exercised it.

Schedule and Preamble agreed to.

Bill reported; as amended, to be considered upon Monday next, and printed. [Bill 262.]

SIR H. CAMPBELL-BANNERMAN (Stirling Burghs): Perhaps I may be allowed to ask the right hon. Gentleman when he proposes to introduce the complementary measure which we were told of more than a month ago as being ready to be introduced in a few days—I mean the measure adding certain gentlemen to the Privy Council, and which was considered essential to the scheme.

MR. J. CHAMBERLAIN: It was not said to be essential—certainly not—but it was the desire of Her Majesty’s Government, if such an arrangement could be made agreeable to the colonies, to make the arrangement I referred to on a previous occasion. But what I have to state now is that we are in communication with the Australian colonies through the Australian delegates, and we have not at present received information as to their desire on the subject. Therefore, I am really unable to give any further information. I think it is fair to say that I am led to understand that some further conference will be required in regard to this. It may be that the delay will make it impossible to bring in the Bill this session; but, at all events, the delay will not be with us. It will only be because the colonies desire a conference on the subject.

HOUSE OF COMMONS.

Monday, 25th June, 1900.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

As amended, considered; read the third time, and passed.

HOUSE OF LORDS.

Tuesday, 26th June, 1900.

COMMONWEALTH OF AUSTRALIA
CONSTITUTION BILL.

Brought from the Commons. Read
1^a; to be printed; and to be read 2^a on
Friday next.—(*The Earl of Selborne*.) (No.
128.)

HOUSE OF LORDS.

Friday, 29th June, 1900.

COMMONWEALTH OF AUSTRALIA
CONSTITUTION BILL.

[SECOND READING.]

Order of the Day for the Second
Reading read.

THE UNDERSECRETARY OF STATE
FOR THE COLONIES (*The Earl of
Selborne*): My Lords, I would especially
invite your attention to the unique
circumstances under which the move-
ment for federation in Australia, which
has ended in the Bill now before your
Lordships for consideration, has had its
origin, and brought its history, I hope,
almost to the point of fulfilment. The
Constitution of the United States of
America was born of a struggle for
national independence. The Constitution
of the Dominion of Canada was accepted
as the solution of internal political
troubles constantly recurring over a
course of many years, and sometimes
acute. The consolidation of the German
Empire was rendered possible by the
victories of a great war. It has been
reserved for the people and the statesmen
of Australia alone to determine to
federate out of what I may call pure
reason. They, and they alone, have
looked to the future, and, as custodians
of the interest of their descendants,
have determined to consolidate the
colonies of Australia in one great com-
monwealth. The fact that this movement
has existed and the work has been com-
pleted under no special pressure calls, I
think, for a tribute of admiration from us,
because it must have greatly added to the
difficulties of the statesmen who had the
task in hand. They had to reconcile six
different States, each with divergent

interests, each with its own separate
local conditions and its own separate
history, and in each of which had arisen
the usual growth of vested interests; and
to have completed the work of federation
without any very great pressure is a most
remarkable performance, and one that will
place the statesmen of Australia on a level
with those statesmen who have been
admired by the world for the Constitutions
they gave to America and the Dominion
of Canada. I would ask you, my Lords,
before you read this Bill a second time, to
take note of some very remarkable features
in the Constitution embodied in the Bill.
First of all, there are the provisions for a
change in the Constitution in the future,
if necessary. Any law for altering this
Constitution must be passed by an absolute
majority of each House of Parliament;
that is, the Senate and House of Repre-
sentatives. When so passed it must be
submitted to the vote of the electors in
each State who are qualified to vote for
the election of members in the House of
Representatives. If in a majority of the
States a majority of the electors who vote
are in favour of the proposed law, and if
a majority of all the electors voting in all
the States are also in favour of the pro-
posed law, it passes, and must then be
presented to the Governor General for
the Queen's assent. I think I ought to
assure my noble and learned friend Lord
James of Hereford that in those colonies
where there is womanhood suffrage as
well as manhood suffrage only half the
number of votes are allowed to count. I
would ask your Lordships to observe that
no proposed alteration of the Constitution
the object of which is either (1) to
diminish the proportionate representation
of any State in the Senate or House of
Representatives, or (2) to diminish the
minimum number of representatives, or
(3) to alter in any way the limits of a
State, or (4) to affect the provisions of
the Constitution in relation to any parti-
cular State, may become law unless it is
approved by the majority of the electors
voting in the State which will be affected
by the proposed alteration. I would ask
you to compare those provisions for a
change of the Constitution with the pro-
visions that obtain in the United States
of America. You will notice that in the
case of the Commonwealth of Australia a
proposed change must not only be passed
by a majority of the people in a majority
of the States, but also by a total majority

of those voting in all the States on the question. In the Constitution of the United States there are two methods of effecting a change in the Constitution, but I will only mention one which, I believe, has been invariably used in all the changes of the Constitution which have taken place. Congress, *i.e.*, the Senate and the House of Representatives, may, by a two-thirds vote in each House, prepare and propose Amendments. Those Amendments, when so prepared and proposed by Congress, must then be submitted to the Legislatures of the States, and they are only passed if the Legislatures of three-fourths of the States ratify them. I think your Lordships will see that in one point, at any rate, these two processes are likely to have the same effect. In neither case is it probable that any Amendment of the Constitution can be made to which a majority of the people are opposed. If you come to consider the converse proposition, whether it is possible or likely that a change in the Constitution, which the majority of the people really desire, may not be affected owing to the process which the Constitution enjoins, then I must say I think the advantage lies with the Constitution of the Commonwealth of Australia. It is obviously more difficult to make a change in the Constitution of the United States than it would be in the Constitution of the Commonwealth of Australia. The only comment I would make upon that is that it seems to me that the proposals in the Commonwealth Bill are more truly democratic than those of the United States. I use that term with its ordinary grammatical meaning and without any attribution of merit or demerit. Under this Bill the final arbiters on a question of a change of the Constitution are the people -- the voters. The next provision to which I would call your Lordships' especial attention, one of very peculiar interest for this House, is the provision against a deadlock between the two Houses. Section 57 runs as follows—

"When the House of Representatives has passed a law which the Senate rejects or fails to pass, or amends in a way to which the House of Representatives will not agree, the House of Representatives may, if it wishes to force matters to a conclusion, again pass the law with or without any amendments emanating from the Senate, after an interval of three months. If the Senate again rejects it or omits to pass it, or amends it as above, the Governor-General may dissolve both Houses

simultaneously, but such dissolution must not take place within six months of the natural date of dissolution of the House of Representatives."

I may say here, in passing, that the House of Representatives must be re-elected every three years, but the Senate as a body is never dissolved, except under the provision which I have just quoted. A member of the Senate is elected for six years. Half of the first Senate will be elected for only three years, and after that a half will be elected every three years. So you will see this is a very special provision for a dissolution of the whole Senate in the case of a deadlock. The section continues—

"If after dissolution the new House of Representatives again passes the law with or without any amendments emanating from the Senate, and the Senate again rejects it, or fails to pass it, or amends it as above, the Governor-General may convene a joint sitting of the members of both Houses. The joint sitting may deliberate together on the proposed law, and on any amendments as to which the two Houses have disagreed. After deliberation the next step is to vote on the law. This they must do together, and if the law itself, with or without Amendments, is carried by an absolute majority of the total number of members of the two Houses, the law as passed by the joint sitting will be regarded as duly passed by both Houses."

Your Lordships will observe that the terms all through are permissive and not obligatory. "The Governor-General *may* dissolve both Houses." That is, of course, the Governor-General acting on the advice of his Ministers. "The Governor-General *may* convene a joint sitting of the two Houses." He is not obliged to do so but may do so on the advice of his Ministers. But when once this meeting of the two Houses is convened then the vote—the final vote—must be given by the two Houses sitting as one House, though the deliberations which take place previous to the vote may, if they like, in each case be separate. There is a variation to which I would draw your Lordships' attention in those cases where the disagreement is as to a change in the Constitution. In the case of an ordinary disagreement this process is only applicable if the Bill on which the dispute has occurred has emanated from the House of Representatives. There is no corresponding privilege to the Senate in the case of a Bill which has emanated from the Senate. But if the Bill as to which disagreement exists is a Bill proposing a change in the Constitution,

then the same privilege obtains in the case of both Houses. My Lords, the observations that I would make to you as regards this process are two-fold. In the first place, I believe it is the very first time that in an Anglo-Saxon Constitution any attempt has been made to provide for a solution of a deadlock between the two Houses. There is no such provision in the Constitution of the United States of America; there is no such provision in the Constitution of the Dominion of Canada. The second observation I would make is that the plan in this Bill has this merit: that it goes to the root of the whole matter and refers the final decision to the electorate—it does not leave the decision to one of the two Houses which are parties to the dispute. Therefore, whatever decision is arrived at is one that must be accepted as final and conclusive by all parties. I would briefly point out to your Lordships the provisions for the election of the two Houses. The Senate is devised specially as a representative Chamber of the States as States. Each original State has six Senators, no matter what its area or population may be. The electors for the Senate are the same as those for the House of Representatives, and in the absence of any provision to be made by Parliament in the future the electors vote in each State as one electorate. The election, as I have already mentioned, is for six years. In the case of the Senators first elected, half of them are chosen by lot to go out at the end of three years. The House of Representatives is to have a total number of Members which is to be double the total of the Members of the Senate, and which are to be allotted to each State in proportion to their respective populations. The States are to be divided into constituencies for the purpose of this election by their own State Parliaments if they wish. In default of such legislation the electors will vote as one electorate. The electorate for the Commonwealth Parliament is in each State to be the same as the electorate for its own Chamber. And here I must commiserate with my noble and learned friend whom I congratulated just now on the fact that the rights of women voters in those States where womanhood suffrage prevails are carefully guarded by Section 41 of the Bill. The election of the House of Representatives is to be triennial, and each Member is to

get a remuneration of £400 per annum. No man can sit in both Houses. The feature of this Constitution which seems to me to most differentiate it from the American Constitution is that throughout it strictly follows the English plan of uniting the Legislature to the Executive, and in taking care that the Government of the day is armed with the full authority of the people who elect the majority in the Chamber. Your Lordships will appreciate the reason why I lay stress upon that if I remind you what the condition of affairs is under the Constitution of the United States of America. There the President is elected once in every four years. The House of Representatives is elected once in every two years, and one-third of the Senate is elected every two years. The result is that, although all authority in the United States necessarily and exclusively emanates from the people, yet it never so emanates at one moment. The will of the people of to-day is constantly influenced by the will of the people of yesterday and to-morrow. That is not our English plan, and the Constitution of Australia strictly follows the English plan. There can be no doubt that under it the Government of the Commonwealth of the day will represent the opinion of the Australian people at the moment of the last election. Of course one of the most difficult class of questions that meets the framers of a Constitution like this is the principle on which the separation of power between the Federal Parliament and the local or State Parliaments is to be devised. The principle of this Bill is very simple. Section 52 defines the very few subjects in respect to which the Commonwealth Parliament is to have exclusive authority. There is a catalogue in Section 51 of the subjects with which the Federal Parliament may deal concurrently with the State Parliaments. The only powers, in fact, in matters of legislation which are taken away from the State Parliaments are those referred to in Section 52. The Commonwealth Parliament may extend its legislative horizon and deal with other matters if referred to it by the State Parliaments, and these provisions give that general character of elasticity to the Constitution which, I think, is its most prominent feature. The framers have made a deliberate choice between what I will call the rigidity of the American Constitution and the

flexibility of the English Constitution, and although not able to allow that flexibility which has been of such great advantage in this country, yet the Constitution is framed on lines of flexibility rather than on lines of rigidity, and I do not think that any of your Lordships will doubt that in making this choice the framers of the Bill have followed a true instinct of the British race. It is in strict accordance with the political instincts of our race that our machinery should be of such a kind that it can be changed and developed as the times and conditions alter, and that we should not now attempt to stereotype a particular machinery which our descendants may not be able to change or alter, however much the condition of the country required it. There is one subject which I have not yet touched upon. I have referred to these matters because their importance has been rather obscured in the other House of Parliament by the attention which has been devoted to Clause 74. That is the clause, as your Lordships are well aware, which deals with the question of appeal to the Privy Council. Considerable controversies have centred upon that clause—controversies which your Lordships on both sides of the House will be glad have ended so happily. What I wish to explain briefly is the exact position of the matter as it has been left by, I will not say the compromise, but by the solution arrived at with the consent of all parties. The position of the Dominion of Canada with respect to appeals to the Privy Council has been generally adopted as a model for our admiration. Now, in what respect will the right of appeal in Australia differ from the right of appeal in Canada? In Canada an appeal may be taken by a litigant from one of the inferior courts direct to the Supreme Court of Canada, or to the Privy Council. Under this Bill an Australian litigant will have the same privilege. In Canada, if a litigant has chosen to go to the Supreme Court of Canada, he may appeal from the decision of that Court to the Privy Council with and by leave of the Privy Council. In Australia a litigant will have the same privilege, except in one special class of cases where the question which has arisen is the limits *inter se* of the powers of any State, *qua* the Commonwealth, or of one State *qua* another State. In those cases litigants may still have the liberty of appeal to the Privy Council from the High

Court of Australia, only the leave for that appeal is to be given not by the Privy Council, but by the High Court from which the appeal is to be carried. That is a very slight variation. It has been contended, I know, that its effect in questions involving constitutional issues is to make the High Court of Australia a co-ordinate court with the Privy Council. I speak with great diffidence in the presence of legal authorities, being no legal authority myself, but I understand that there is a strict precedent in the law of this country. At the present moment there are appeals in questions of bankruptcy from the Divisional Court to the Court of Appeal; and it is not the Court of Appeal but the Divisional Court which gives the leave to appeal, and no one will argue that the power of the Divisional Court to give leave to appeal constitutes it *ipso facto* a co-ordinate authority with the court to which it gives leave to appeal. If any doubt should remain in any of your Lordships' minds as to whether this settlement has obtained the full concurrence of the Australian colonies and people, perhaps you will allow me to read a few communications which have reached us since such communications as we had received had been laid before Parliament. The present Agent General of Victoria, Sir Andrew Clarke, writes under date 21st June—

"I have pleasure in communicating to you the following telegram, which I have received from my Government: 'Commonwealth Bill. Inform Secretary of State for Colonies Victoria approves Clause as now altered, and hopes speedy passage of Bill. Thank Secretary of State for Colonies for great trouble, kindly interest, and congratulate him on successful settlement.'"

Earl Beauchamp telegraphs from Sydney—

"Resolution passed by Legislative Assembly preferring Clause 74 in Bill as submitted by Australian Colonies, but, failing that, desiring compromise mentioned in your telegram of 16th instant. Telegram sent to New South Wales delegate late last night asking him to convey decision to you."

Lord Tennyson telegraphs from South Australia—

"Cabinet Ministers cordially acknowledge your continued efforts and of Imperial Government to reconcile what appeared to be to them the conflicting interests of Australia and Empire in connection with appeal clauses of Commonwealth Bill, and rejoice at prospect of early accomplishment of Federal union."

Viscount Gormanston telegraphs from Tasmania—

"Referring to your telegram of 21st June Ministers request me to send you following message:—'Begins: They desire to express gratification that whilst safeguarding British interests you have given to Australian colonies wider scope for the development of national life, and to express gratitude for patience and tact exercised by you throughout the conduct of deliberations and negotiations.'"

Lord Lamington sends the following telegram from Queensland—

"On behalf of my Ministers and myself I desire to offer you my hearty congratulations on the successful manner in which you have overcome the difficulties arising out of earlier proposals for amendment of Clause 74, Commonwealth Bill, and to express appreciation of satisfactory nature of the compromise in the clause as now passed."

The result of those communications is to show that while the Governments referred to would have preferred Clause 74 as brought from Australia to this country, yet they accept the arrangement proposed, and I think it is not unfair to say that all the other colonies concerned are completely satisfied with the clause as now framed, including those who were supposed to be most strongly in favour of the original form of Clause 74. I believe the solution arrived at is one which not only commends itself to the Australian people, but one which will be found to work well in practice; and I will only conclude by asking your Lordships to read the Bill a second time, and to join with me in offering the heartiest congratulations of this House to the Statesmen and the people of Australia.

Moved, "That the Bill now be read a second time."—(*The Earl of Selborne.*)

EARL CARRINGTON: My Lords, the House has listened, with the attention that it deserves, to the very clever, remarkable, and interesting speech which has just been made by the noble Earl the Under Secretary of State for the Colonies. It was an interesting speech, because, for the first time, we have some idea of what the real intentions of Her Majesty's Government have been in regard to this measure, which, up to the present time, have been both confused and confusing; it was remarkable for its omissions as well as for the paucity of its admissions; and it was extraordinary for the cleverness with which the noble Earl skated over the thinnest of ice, threw difficulties behind

him as if they never existed, and almost made the House believe that there had never been any crisis on this question at all. Indeed, so dexterous was his way of dealing with the subject, that while he was speaking I could not help thinking that I was in one of the Parliament Houses at Cape Town, where, as your Lordships know, the custom is that the same Minister can bring in a Bill in both Houses, though he can only vote in one. The noble Earl's work was so skilfully done that I thought the same skilful hand that piloted the Bill through the other House was now starting it on its passage through your Lordships' House. Verily, though the voice was the voice of Jacob, the hand was the hand of the well-known and astute political Esau. The noble Earl did not say one single word as to the manner in which this great question originated, and I hope your Lordships will bear with me for a few minutes while I refer to it. The Federation of Australia first came within the range of practical politics in the month of October, 1889, when Sir Henry Parkes, to the great amazement of the colonies, and without having said a word to the Cabinet, made a great speech in which he said that the time had come for the federation of the Australian colonies. The idea ran like wildfire all over the great Continent of Australia, and in the early part of the following year, 1890, in spite of the difficulties of the Federal Council—which, as your Lordships will remember, was a Council of the different States of Australia, with the exception of the Free Trade State of New South Wales—which were eventually got over—a Convention was held, I think, at Melbourne, at which Lord Hopetoun, who for five years was the representative of the Queen in the great colony of Victoria, made his first appearance in public. The toast of "United Australia" was responded to by Sir Henry Parkes, who made a speech worthy of the man and of the occasion. I need not weary your Lordships by mentioning the difficulties that arose. There were the Free Trade and Protection difficulty, the military difficulty, and, of course, there was the great question as to whether the capital was to be Melbourne or Sydney. There were many disappointments and many delays, but all these difficulties were successfully overcome, and at the end of last year a Bill was

piloted through all the different Houses of Parliament, and submitted to a referendum of the Australian Colonies, and carried by a majority of nearly three to one. I want the House to remember—it was a point carefully omitted by the noble Earl—that during the whole of the ten years over which those negotiations extended, the British Government, who were kept well informed of everything that was going on, and knew every detail of the Bill as well as they knew that large quantities of arms were being smuggled into the Transvaal in piano cases, ladies' bonnet-cases, etc., took no more notice of them than they did of the importations of the arms to which I have referred. It was therefore thought that when the Bill came over to this country there would be no possible objection to it, and it was not at first thought necessary to send delegates. Thank goodness, wiser counsels did prevail, and five delegates came to England to explain the provisions of this self-made compact of the Australian people. Those delegates had not the smallest right, power, or authority to accept one single word of amendment or alteration in the Bill. They came over solely for the object of explaining the clauses of the Bill. They were very hospitably entertained when they reached London in the early part of this year, but the man in the street, who somehow or another seems to know a great deal more than the Ministers of the Crown, said there was a rift in the lute, and that there were some objections to some of the provisions of the Bill. And then it came out that Mr. Chamberlain had put his back against the wall. In another place the right hon. Gentleman made a public announcement as to the intentions of the Government with regard to the Bill, and before he did so he made a remark which I think your Lordships will have noticed that every English Englishman—by that I mean a man who has never visited the colonies—always makes in speaking about them. The right hon. Gentleman said that the links between this country and the colonies at the present time were so slight that almost a touch would break them. After the way in which the colonies had unanimously rallied to the support of the mother country, when British territory in South Africa was invaded, and invaded under circumstances of preparation for defence which would

probably have delighted the heart of Ethelred the Unready, it was astonishing that such a statement should have been made. If there ever was a time when the links between the mother country and the colonies were stronger than ever, it is, I should have thought, the present time, when all parts of the Empire have rallied together in its defence. Having delivered himself of that pious opinion, the right hon. Gentleman proceeded to do what a child of ten would have been able to tell him was the very thing to break these links, if they could be broken, which I deny. He put the Colonial Office finger in the Australian pie, and announced the two great objections which Her Majesty's Government entertained to the Australian Commonwealth Bill, neither of which was mentioned in the noble Earl's speech. The first objection was that the definition of a colony raised a doubt whether the legislation of the new Commonwealth Parliament would or would not come under the provisions of the Colonial Laws Validity Act. There is that old question of definition again, which seems to knock all Colonial legislation on the head. It seems to me that one reason why Her Majesty's Government seem destined once in every ten days to plunge up to their necks in some dreadful difficulty in their Colonial policy is their absolute inability to call a spade a spade. It was said, "You cannot have such an easily mistaken and difficult word as 'Colony' in the Bill; it cannot be allowed. Why put the word 'Colony' in the Bill at all?" The Australian delegates were asked their opinion as to the proposed great change, and they agreed to it with a twinkle in their eye, with gratitude in their hearts, and with their tongues in their cheek. Mr. Chamberlain had triumphed, and Australia breathed again. The second objection—the real lion in the path—was as regards Clause 74, but the noble Earl absolutely omitted to tell us what Clause 74 in its original shape and form was. Clause 74 was simply this, that in all matters relating to Australia, and Australia alone, in which the public interest of any other part of the British Empire was not concerned, the final decision should rest with the High Court, and that there should be no appeal to Downing Street. That was the practical and logical conclusion of Home Rule. It was Home

Rule in its best, simplest, and fairest form. But the right hon. Gentleman said to himself, "Am I not a Unionist?" and he kicked the clause as high as Diamond Jubilee did his heels when he went down the course before winning the last Derby. The contention of the Secretary for the Colonies that Clause 74 would destroy one of the most important ties connecting the different parts of the Empire is, at any rate, a logical position, whether one agrees with it or not. That may be the idea of English Englishmen, but is it the idea of the great majority of the Colonists throughout this great Empire? I venture to think not. To get out of the difficulty about the right of appeal the right hon. Gentleman put forward what seems to me, since the Imperial Zollverein, one of the most madcap schemes that was ever devised for tying the tails of the Australian kangaroo and the British lion together in an impossible sailor's knot. He proposed to put a certain number of coronets on the heads of illustrious Colonial Judges, and put £6,000 or £7,000 a year in their pockets for a period of seven years. What would happen to them afterwards? He does not make them life Peers—they are to have a lease only of a Peerage; and when the seven years expire I presume they would have to return their robes into store in the same way as a servant who only stays a very short time in a nobleman's family does his plush breeches and liveries. Having succeeded in forming this great judicial body, the right hon. Gentleman took a Palmerstonian attitude, and, putting himself on a pedestal, made a *civis Romanus sum* and soda-water kind of speech, in which he said that he never would be a party to doing anything which would put an end to the right of every British citizen all over the Empire to lay his grievance at the foot of the Throne, and he was very strongly backed up. That was a perfectly legitimate position, but a dangerous one from the point of view of those who desired to see the expressed wishes of the majority of the Australian people respected. I am speaking under correction, but I believe I am right in saying that the right hon. Gentleman thought he had "four by trumps" in his own hand. He was acting under the ægis and with the advice of the eminent, powerful, noble, and learned Lord who sits on the Woolsack as Lord High Chancellor of England. That, I believe,

was well known. He also had the support of the Chief Justices of four of the colonies—men of light and leading, and men of the highest possible honour, whose opinions ought to be very much respected. He had the great advantage of being backed up by *The Times*, the *Melbourne Argus*, and the *Brisbane Courier*, and he had the support of the Member for Australia, Mr. J. Henniker Heaton. He had the additional advantage of publishing a controversial despatch from a Constitutional Governor—it seems to me that Her Majesty's Government have a sort of mania for publishing despatches—and he had the hearty good wishes of the conscientious and honourable opponents of the Australian Federation Bill, who looked upon the right hon. Gentleman's interference with great hope that it would result in the Bill being subjected to a referendum, which, plus British interference, might be the means of staving off the measure for five, ten, fifteen, and perhaps twenty years. The question at that period had assumed an acute phase, and the imminence of the peril and the greatness of the danger afforded the only ground of hope. The future of Australia practically lay in the hands of one man—a man who, unlike all the rest of his colleagues, has two most wonderful characteristics. The first characteristic of the right hon. Gentleman seems to me to be his ability to make himself believe anything he likes at any particular moment. Was he not the man who, throwing aside the Spartan simplicity of his earlier life, was so overcome with the glamour of twenty-five minutes conversation with an Emperor that he announced to astonished Europe and the amazed Secretary of State for Foreign Affairs that an alliance had been concluded between England, the great Empire of Germany, and the United States? Was he not the man who was so easily able to look at both sides of the question at once that he openly and publicly, in his place in Parliament, defended the man who was responsible for the greatest mistake of modern times, the unsuccessful invasion of a friendly State by 400 armed men? Was he not the man who at that time used language which threw away the honour and the good name of his country? In the hands of that single man lay the future of Australia. The crisis was a great one. So anxious was the time that the health of one of the delegates, Mr. Deakin, one

of the finest representatives of Australian manhood, broke down absolutely, and he had to return to his own country. The only chance lay in the possibility of the right hon. Gentleman finding some way to get round what he had said, and to extricate himself from the dilemma in which he was placed, and, fortunately, that chance came off. The next time the right hon. Gentleman had an opportunity of explaining his position it was evident that he had thrown up the sponge. If the right hon. Gentleman had come forward before the House and acknowledged that he had made a mistake, not one word would have been said on this side of the House or by any Liberal in the whole country. But he did a very different thing. One of those extraordinary transformation scenes took place with which, unfortunately, we have of late become so familiar. The Secretary for the Colonies got off his pedestal, threw off the toga of the Roman citizen and the Palmerstonian frock-coat, and now, being the man who took up a perfectly illogical position which would have emasculated and mutilated the Bill, he stands before the country as one of the creators and champions of Home Rule, or rather rule at home, all over the world. I should like to read to the House what the right hon. Gentleman proposes to do. He said—

“Clause 74 will be exactly reversed. Whereas in the original clause the appeal was to cease in all cases where the public interest of some portion of Her Majesty's Dominions was concerned, in the clause as we now propose to insert it, the appeal will lie in every case except the case where Australian interests alone are concerned.”

Does the House of Lords understand that any more than the House of Commons did? It seems to me a distinction without a difference. *Punch's* Kangaroo remarked—

“Well, I suppose I've got what I wanted; but I'm hanged if I know what I've got.”

The right hon. Gentleman performed a most extraordinary feat of political legerdemain. He took up this 74th Clause, which, he said, was doing away with the ties which connect the Empire, threw it up into the air and caught it again, turned it inside out, and then handed it across the Table as the Chamberlain compromise. It was done so rapidly that it took the House of Commons in, and especially Mr. Asquith, who got up and congratulated the right hon. Gentleman

on having arrived at a solution which was honourable to both sides. The House of Commons apparently went home thinking that such an agreement had been arrived at. But there is a French proverb which says, *La nuit porte conseil*, and when the Members of the House of Commons came down to breakfast and read their *Times* they found there was no agreement at all, but a surrender. As the critic of *The Times* newspaper said—

“To all appearances the Colonies were ready to acquiesce in the original decision of the home Government. But time may, perhaps, show that here the sacrifice has been excessive and unwise.”

It was no longer an agreement, but a sacrifice. Men went forth to their labours. They read the *Daily News*, the *Daily Chronicle*, and the *Westminster Gazette*, and the scales fell from their eyes. They discovered that this so-called agreement was a surrender—a surrender, I admit, of an impossible and dangerous position, and a position that never ought to have been taken up, but a surrender as complete and as unconditional as that of the Boer commander Cronje to the soldier-statesman Lord Roberts. I should like to ask what is the position of those men who so loyally supported the right hon. Gentleman when he decided to knock out the 74th clause and to retain the Privy Council? What shall we hear from noble Lords who supported this action of Mr. Chamberlain? Shall we hear that they have changed their mind with the Secretary of State, and that they agree with this unconditional capitulation? I have but one word more to say. I hope the House will put its foot down on the doctrine which has been assiduously preached in some places, that Australian nationalism and federation is a Tory discovery, and that the friendship and support of the colonies are of Tory creation. This has been preached in the country by people who ought to know better, and I hope that both sides of the House will stand shoulder to shoulder in their determination to stamp out any attempt to make political capital out of Australian federation. I have to apologise for having made such a lengthy speech, but I must say, in conclusion, that we unitedly hail the wise and patriotic action of Australia as a step towards that still larger federation of equal rights and common citizenship under the Crown, and towards that dual allotment of

responsibility in all dealings with other nations which must give permanent security to our Empire at large. A united House of Lords offers its congratulations to the delegates on the victory they have so deservedly won, and a united Empire will congratulate your Lordships' historical and hereditary House on unanimously passing the Second Reading of the Australian Commonwealth Bill.

THE LORD CHANCELLOR (The Earl of HALSBURY): My Lords, I have listened with amazement and the greatest possible pain to the oration which has just been made. The noble Lord lays down the dogmatic proposition that it is undesirable to make political capital out of this Bill. Yet he has given an extraordinary and distinguished example of the wish to do it himself. I should like to know very much what is the attitude of the Liberal party in respect to this Bill. Do they admire it and desire it to be passed, or not? Judging from the conclusion of the noble Lord's observations, he desired that both sides of the House unanimously and with great applause should pass this Bill. May I ask, if that was the meaning of his oration, what was the object and purpose of that oration? In what one respect beyond his concluding sentence has he said anything to induce you to pass it with that applause beyond a very violent and, if he will forgive me for saying so, I think a very inappropriate attack upon the Secretary for the Colonies, in which not only his conduct in respect of this particular Bill (as to which I shall say a word presently), but in respect of his whole political career has been the subject of a most violent attack? May I suggest to him that it is very easy to say hard things of persons who are not present to defend themselves? Mr. Chamberlain, I can assure him, is quite able to answer for himself, and if in the House in which he sits and speaks this oration had been made, I am sure he would have had a good answer to each of the gibes the noble Lord has indulged in. What are we dealing with?—a Bill that has been approved of by the Australian people and by the House of Commons (on both sides) in its present form; and I do not understand what the noble Lord means by his suggestion that after the House had approved of it they woke up next morning and found they had been deluded. What evidence is

there of that? I am not aware that the House of Commons has retracted the approval it gave, or was so confused that it did not know what it was doing. Upon what authority does the noble Lord say that the Liberal party retracted their approval, and is he put up here to say that the Liberal Party, if they dared, would refuse to accept this Bill? If not, what is the meaning of the statement that the House of Commons had changed its mind and did not know what it was doing? I am afraid the noble Lord is intoxicated by his own eloquence. What is the objection to what has been done with great care, assiduity, and skill? My right hon. friend the Colonial Secretary welcomed the views of the delegates, listened to their objections, and pointed out the extent to which he was not able to meet their views. When, after consultation with the various Prime Ministers of the various colonies, they came round to what has been called a fair and intelligible compromise, the House of Commons unanimously, I may say, approved of and admired the skill with which that compromise had been effected. What are we discussing? What does the noble Lord object to? What is there now in the Bill which can justify his extraordinary attack on Mr. Chamberlain? I am not aware that the noble Lord has pointed out anything that is wrong. Is this speech to be quoted in Australia as the opinion of noble Lords on the Liberal side of the House in respect to this measure? The legal, commercial, and all the other elements which constitute Australia's greatness have approved of this Bill, and it is received in this House by a speech in which every gibe which ingenuity and fluent rhetoric could suggest was levelled at the Colonial Secretary for accepting that view. I do not know what is supposed to be the object of this speech, but it appears to me that it is calculated to do great mischief and is calculated to spoil the harmony and the unanimity with which this country accepted this Bill. It certainly will give rise to the suspicion that, though the Liberal party in the House of Commons accepted this Bill in the spirit in which they did accept it, it was solely against their will to do so, and if they had had the chance they would have rejected it. I hope that that is not the case, though it is what the noble Earl's attack on Mr. Chamberlain would lead one to suppose.

I do not descend to argue what has not been argued at all, but what has been thrown out as a mere suggestion. I rise solely for the purpose of making this protest against what is, to my mind, a most mischievous speech, calculated to give great offence and to do no possible good that any human being can suggest.

LORD DAVEY: My Lords, I regret that the noble and learned Lord on the Woolsack has not given any explanation as to some of the clauses of this Bill which have been referred to. I shall not, of course, follow the Lord Chancellor in the remarks he made upon the speech of the noble Earl below me, but shall confine myself to a few criticisms of the Bill. I do so, not with any hostile intention towards the Bill, but because this is the only opportunity one will have of offering such criticisms. In the concluding words of the speech of the noble Earl who moved the Second Reading, I am sure every one of your Lordships will concur—namely, in congratulating the people of Australia on having brought this great project to so successful an issue. I am disposed to go further and to say that I feel sure those of your Lordships who have studied this Bill, including those who take part in the judicial business of this House, must have been struck by the care, pains, and skill with which this Bill has been constructed. It is not humanly possible to so frame a Bill of this kind as to avoid giving loopholes for litigation, but I have never seen any Bill drawn more skillfully and with greater care than this one. I would like to draw your Lordships' attention for one moment to Clause 51. That is a very remarkable clause, because, differing from the analogy of the Constitution of the great Dominion of Canada, it does not propose to give exclusive powers to the Parliament of the Commonwealth, but names a number of subjects on which the latter will have concurrent jurisdiction, as the noble Earl said, with the Parliaments of the different States which compose the Commonwealth. In that way you will avoid many questions which have arisen between the provinces and the Dominion of Canada as to the limits of their legislation. But, on the other hand, I am afraid the Australian people will find that they will fall into another class of difficulty—namely, the difficulty of reconciling the Acts passed by the Commonwealth Parliament with the Acts

passed by the different Parliaments of the different States on the same subjects. There will, in short, inevitably be considerable overlapping. Those of your Lordships who have looked through the numerous subjects included in Section 51 must have been struck by their generality. That is no fault of the Bill, because in a Bill of this kind you cannot foresee the detailed manner in which these questions will arise, and all you can do is to lay down general principles regulating the legislative limits of the Parliament. But the generality with which this clause is expressed will, of course, give rise to many questions. Undoubtedly many questions of a Constitutional character will crop up both as to the limits of the legislative powers of the Commonwealth and of the States, and also as to the reconciling of Acts passed by both the States and the Commonwealth under their co-ordinate powers. During my practice, which was spread over a great many years, before the Judicial Committee, and since I have had the honour of a seat on that body, I have made the personal acquaintance of many of the gentlemen who have been and are judges of the Australian Courts, and I have had an opportunity of seeing their ability and the impartiality and integrity with which the judicial work in Australia is carried on. I have no doubt that the Judges of the Australian Courts will approach the consideration of these constitutional questions in a large and statesmanlike spirit, and will treat this Act as it ought to be treated, more in the nature of a treaty for the purpose of reconciling conflicting interests. The fact that it must inevitably lead to a great many difficult questions lends all the more importance to the consideration of the clause which was referred to by the noble Earl, and which has been so much discussed, not only in Parliament, but in the public press and in the country—namely, Clause 74. That clause has gone through, I think, four transformations. As it originally appeared it provided that no appeal should be permitted to the Queen in Council on any matter involving an interpretation of the Constitution unless the public interest in some part of Her Majesty's dominions other than the Commonwealth or the States was concerned. But as regards matters not involving any constitutional question, the appeal would lie from the High Court to Her Majesty

in Council by the leave of Her Majesty in Council. The first proposal made by the Government, as I understand it, was that the appeal to Her Majesty in Council should be maintained intact. That was found impossible. The second proposal was, I think, of a rather extraordinary character. It was that an appeal should be allowed with the consent of the States involved. That amounted to saying that a defeated litigant should not be allowed to appeal except with the leave of his victorious opponent, and that could not be maintained for a single moment. Next we have the clause as it is at present, and it is most important to consider in what way it differs from the clause as it originally stood. In the first place, I have an old-fashioned prejudice in favour of the English language in a British Act of Parliament, and I do not see why Latin words should be introduced when English words would do just as well. But that is rather a small criticism. I should like to know what is the meaning of the words "unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council." If it means nothing more than that no appeal shall be allowed except with the leave of the High Court, then I can understand it. But what is the meaning of "one which ought to be determined"? The clause means nothing more, I apprehend, than this, that an appeal shall not lie without the leave of the High Court, leaving the High Court to lay down the principles and conditions under which such leave shall be granted. I think it is a great pity that the ordinary well-known legal language was not used in this case. Coming to the substance of the clause, it appears to me that it is both larger and narrower than the original clause. It is larger because it gives larger jurisdiction to the High Court, those very important words to which, I understood, the Colonial Secretary attached considerable importance, having been omitted. The original clause contained the words "unless the public interest of some part of Her Majesty's dominions other than the Commonwealth is concerned." I should like to ask why those words are omitted in the clause as it at present stands. As the Bill was originally drafted there was an appeal to the Queen in

Council, by leave of the Queen in Council, from the decision of the High Court on constitutional questions which affected the public interest of any other part of Her Majesty's dominions, but under the clause as it is at present worded, although the question may be one vitally affecting some other part of Her Majesty's dominions, no appeal will lie to Her Majesty in Council except by the leave of the High Court itself. I think we are entitled to some explanation why those words have been omitted. As the Bill originally stood constitutional questions were made the exclusive jurisdiction of the High Court. In that respect the clause as it at present stands differs very materially, and it also differs in this, that an appeal—and this is a matter of very considerable importance—will lie from any of the State Courts to the Privy Council, that is to Her Majesty in Council, on any constitutional question, as well as on any other question, as it did before. As the Bill was originally framed no constitutional question, whether it came from the State Courts or the High Court, could be brought by way of appeal to Her Majesty in Council, but as the Bill now stands constitutional questions may come direct from the State Courts to Her Majesty in Council. I do not hesitate to express my personal opinion that constitutional questions are exactly the class of questions which I should have thought that Australians would have wished to refer to Her Majesty in Council. And for this reason. In a question between individuals the matter may, and generally does, affect merely the interests of the individuals, but constitutional questions between two States may create a vast amount of feeling in those States. Suppose a question arose between Victoria and New South Wales. It is inevitable that a certain amount of local and State feeling would arise. At any rate, it is quite possible that friction would accrue. I do not question the absolute impartiality and integrity of the Australian Judges, but it is important, not only that they should decide the question impartially, but also that the public should believe that they would decide it impartially, and I should consider that there was a danger that the public might think, in a burning question which excited interest in two States, that the opinions of the Judges in the Australian Court had

been more or less influenced by outside agitation. Do not believe for a moment that I say I think it would be so. I do not. But I say they ought to be preserved from any suspicion of that kind, and for that reason I should have thought that this was exactly the class of cases which would more fitly come to be decided by a tribunal which, whatever may be said of it, is not influenced by local or colonial agitation. I admit, in the fullest possible manner, that that is a question for Australians themselves to decide, and as they have thought fit to come to that decision—no doubt from excellent reasons and after much debate and discussion—I do not wish that the opinion of this country should override Australian opinion on the subject. It has been said that the arrangement which is at present made by Clause 74 is, in substance, that which prevails in the Dominion of Canada, and I observed that the noble Lord, in the very interesting and able speech with which he introduced this Bill, made an observation which had previously been made by the Attorney General in another place. But it appears to me that the difference between the two is absolutely vital. In Canada, as the noble Earl justly said, a litigant can appeal straight from the Provincial Court to Her Majesty in Council, or he may, if he prefers it, appeal to the Supreme Court, and there is no appeal from the decision of the Supreme Court without the leave of Her Majesty in Council. I may here take the liberty of saying that it is an exceedingly difficult thing to obtain that leave; it is only given where a really serious question affecting not merely the interests of the litigants, but of others of Her Majesty's subjects, such as the construction of an Act of Parliament or something of that kind is concerned. Permission is not usually given in cases where the Supreme Court has agreed with the Provincial Court, or unless there has been considerable difference, as there sometimes is, of judicial opinion within the Supreme Court itself. No doubt some conditions of the kind will be observed by the High Court of Australia in giving leave, when they are asked to do so, for an appeal from their decision; but, as I said just now, the difference between the two cases appears to be vital. Clause 74 as it stands is a perfect solecism in jurisprudence, and for this reason, that it creates two final co-

ordinate courts of appeal, neither of which is bound by the decision of the other. Suppose, for instance, a question arises in one of the State Courts, and it goes by way of appeal to the High Court, and the High Court decides unanimously one way. The same question, we will suppose, arises affecting the same States or different States—it matters not much—and the defeated litigant (the State Court having followed the decision of the High Court) appeals to Her Majesty in Council, and the Judicial Committee advises Her Majesty to take a different view from that taken in the High Court, with the result that a decision is given the other way. The Judicial Committee, of course, is not bound by the decision of the High Court, nor, as I understand, is the High Court bound to follow the decisions of the Judicial Committee in matters of this kind. They may therefore each maintain their own opinion. I know that the answer that may be made to me is that the Australian Judges are men of such high principle and good sense that they will find some way of either agreeing with the Judicial Committee, or of allowing the matter to be finally decided. They may; but it lies in their discretion, and unless they do so you will have two co-ordinate Supreme Courts of Appeal from the same Courts on the same class of subjects deciding in entirely different ways. That, I venture to think, is a solecism in jurisprudence. Just consider in what condition the State Courts would be put in that case. You would have this very curious result, that the men who were victorious in the State Courts would always be defeated ultimately; and for this reason. If a State Court followed the decision of the High Court the defeated litigant, of course, would not then go to the High Court, but to Her Majesty in Council. But, on the other hand, if the State Court, not considering itself bound by the High Court, should follow the decision of the Privy Council, then the defeated litigant would, of course, go to the High Court, and the High Court would maintain its own opinion and reverse the opinion of the State Court. Therefore, whoever gets the first decision in the State Court under this clause, if it is maintained in its present form, must suffer ultimate defeat. I do not think that is a very happy solution of the difficulty. The original clause was perfectly

logical. It gave the High Court exclusive jurisdiction, but the present clause does not commend itself to my judgment or experience. I do not suggest that your Lordships should make any alteration in the clause. I have made these criticisms in the hope that the question may be considered by the Australian authorities, who have the power, if they think fit to exercise it, of making such modifications in the clause as will remedy the inconvenience I have pointed out. I saw in the ordinary sources of information this morning a suggestion by a gentleman who writes with some knowledge of the subject—I think one of the Australian Judges—that it should be altered in this way, that whenever the High Court disagreed with the Court below (the State Court) on a constitutional question, then there should be an appeal to Her Majesty in Council as of right. That, of course, would at once remove any inconvenience that might otherwise be felt, because then the Privy Council would continue to be the sole ultimate appeal authority. But whether any provision of that kind can be adopted is, of course, as I have said, a matter entirely for the Australian statesmen and lawyers to settle for themselves. I have only to say, in conclusion, that I hope my humble contribution to the criticisms of this Bill will not be misunderstood. It is not conceived in a spirit of hostility. I have no right, in answer to the challenge of the noble and learned Lord on the Woolsack, to speak for the Liberal party, but I can only say, as a humble member of that party, that I rejoice as heartily as any of your Lordships at the introduction of this Bill.

THE EARL OF JERSEY: My Lords, after what has fallen from the noble and learned Lord, the Lord Chancellor, I shall not detain your Lordships except for a few observations with regard to two points. I think the noble Lord opposite did not do justice to the speech in which the noble Earl the Under Secretary of State for the Colonies opened this debate. I thought the speech of my noble friend Lord Selborne was certainly couched in clear and distinct terms, and he brought before the House all the salient points in the Bill. We must remember that this measure has been before the public for a great many months, that it has been followed very closely, and that

as it comes before the House it is the result not only of the views of the other House of Parliament, but also of the views which are held by the very Colonies of Australia who are interested in the matter. There was also one other point the noble Earl mentioned. He was surprised that the Colonial Office had not interfered to express their views when this measure was being discussed in Australia. I thought it was the great glory of this Bill that it was the work of Australians for Australia, and I could imagine the indignation which would have been raised through the voice of the noble Earl opposite if the Colonial Office had taken upon themselves to tell Australia what their Commonwealth Bill should be. My Lords, my words will be very few, and my only excuse for saying anything at all is on account of the interest I must naturally take in the welfare of Australia. The Parliament and the people of this country have accepted this measure with trust and hope, and why have they done so? The gallant deeds of the Australian troops, and the enthusiasm of the Australian people, have created the greatest interest in this country, and the feeling that not only are we one by race and language, but also in spirit and sentiment. But those who have had the advantage and the honour of being associated with Australian Parliaments and Australian public men have an additional and a greater reason for their hope and trust. May I, just in passing, say that I feel perfectly certain that there is no body of men who can be more trusted to do their duty free from outside pressure and free from outside excitement than the gentlemen who fill the posts of Judges in that country. The same questions, the same problems, which we have to deal with at home are also to be met and to be dealt with in Australia. They have been dealt with hitherto with great success, and we have some reason to believe and to feel confident that, as these questions have been dealt with in the several colonies successfully, so when there is a united Parliament to deal with them they will be dealt with even still more successfully, and that if under the old *régime* the different colonies have advanced rapidly to success, still more rapid will be the advance of Australia when all her best councillors meet together in unison. Now consider what this measure will effect. A vast continent, almost as large as Europe, will for

the first time be joined together under one directing Government. Hitherto there have been no less than six different Governments dealing with that continent, and some of them sometimes actuated, one must admit, by a spirit of jealousy, which, we trust, will for ever now disappear. The power of this united country will be something enormous. Its policy—and everyone must admit that Australia should be supreme, should be predominate, at any rate, in the Pacific Ocean—and the direction of its sentiment will be under one head, so that we may feel certain that we are creating a country which in time to come will probably do on that side of the world what we hope, not in vain, I trust, that Great Britain has done in this part. And, my Lords, can any country be started upon a fairer basis than the one which we are about to start now? Because we must remember that, by this Commonwealth Bill, United Australia in a few years will be totally different to what it has been in the past, with its separate colonies, and I certainly believe that, under Divine Providence, we are about to give the most priceless gift which our generation, or almost any generation, can give to those who hereafter will live to enjoy the blessings of a free Constitution. My Lords, there is no doubt that a measure like this has not been arrived at without a great deal of labour and trouble: conflicting interests have been brought together; and we ought to give our meed of admiration to those who, not only in the Convention, but in addressing their fellow-citizens, have succeeded in bringing the people of Australia nearly to one mind upon this subject. I quite agree with what the noble Earl said, that men like Mr. Kingston and Mr. Barton and Mr. Deakin deserve well of the Empire also for their work, in the way in which they have shown their abilities and their common sense in dealing with the difficult questions they have had to deal with in this country. In the future history of the Empire it is almost certain that there will be from time to time awkward questions arising, questions which can only be settled by the exercise of common-sense and goodwill upon both sides; and surely, if any man may feel satisfied with what he has done during six years it is the Colonial Secretary, notwithstanding the attack of the noble Earl opposite. If it had not been for him it is

quite possible that this question would have been in a very different position now. He requires no praise from me, but, at any rate, he must have the satisfaction of knowing that the result of his labour has been that the House of Commons has passed this measure, that this House is not prepared—not one, I believe, in this House is prepared—to go against it, and that he has the support of all the five colonies interested. That must, after all, be the best answer that can be given to any attack as to whether he acted well or not. My Lords, I will say no more, except this: that we are about to set our seal upon a measure which will not only add to the power of Australia for good in the future, but which will also sensibly increase the resources and the strength of the whole Empire.

THE EARL OF KIMBERLEY: My Lords, in the first place I wish to dispel any idea that may be entertained by the noble Earl on the Woolsack or any Member of this House, that I do not regard this Bill with the utmost favour taken as a whole. I regard it as a most auspicious event to the Empire. I regard it as reflecting the highest credit upon the Australian statesmen who, with much difficulty, have managed to frame what is admitted on all hands to be a most excellently drawn up Constitution for that great country. After all that has been said it is really unnecessary to go into the matter at large, or to say anything more than that it is an auspicious occasion. We are not called upon to criticise the greater part of this Bill. That has passed without any objection whatever. The noble Earl who moved the Second Reading very properly and very clearly went through the different clauses of the Bill. I am not going to discuss these clauses, with the exception of one to which I will refer presently, because there has really been no contest whatever with regard to them. I wish to impress upon the House, turning our eyes altogether for a moment from the one disputed clause, that it is to the highest credit of those who framed this Bill that it should be a Bill which, taken generally, and even in detail, has met with the general approval of the British Parliament. I say that that is a remarkable effort in the way of drawing up a constitutional document. We have never attempted to draw up a

Constitution in writing in this country, and I should have doubted myself whether we were qualified to do it. But I should change my mind now because I should say that probably we are as well qualified as our Australian brethren, and our Australian fellow-subjects have shown us that it is quite possible for men of the English race to draw up a constitutional document of this kind with perfect success and clearness. Now, my Lords, having said that, I will not trouble the House on the subject of the Bill generally, because I think I should be occupying your time unnecessarily; but I will now refer for a moment to Clause 74, which has been the subject of considerable controversy. Of course, I am not going to attempt to discuss the legal questions involved. I must, however, say a word in reference to the remarks of my noble friend Lord Carrington upon this Clause 74, around which has raged whatever controversy there has been. It is perfectly true that there are men on this side of the House—and I am perfectly free to confess that I include myself among them—who, however they may regard this as a non-party matter and rejoice at the establishment of this Constitution for Australia, yet do not think themselves entirely debarred from criticism as to the manner in which the controversy on Clause 74 has been conducted. I hope I am not usually ungenerous to opponents, and I certainly have not the least wish to be ungenerous towards the Colonial Secretary; but I think there is an impression—and something said by the noble Lord who has just sat down rather tends to confirm it—that there has been a desire shown to ascribe an undue amount of credit to the right hon Gentleman for his share in bringing about the settlement of this Constitution. In point of fact, the passing of this Bill, except in regard to the 74th Clause, did not depend upon any Colonial Secretary, nor, in point of fact, did it depend on Her Majesty's Government, because it was not framed here and did not proceed from any suggestion from Her Majesty's Government; and, indeed, I think it is to the credit of Her Majesty's Government and of all parties that they did not commit the egregious error of attempting by proposals made here to induce the Australian colonies to adopt a federation. I have always held, and I am more than ever convinced of it, that all proposals for federa-

tion should emanate from the colonists themselves. Without going back upon an old subject which is present to my mind, I must say that the attempt of an old friend of mine, whom I much esteemed, though he was a political opponent, Lord Carnarvon, by active measures on the part of Her Majesty's Government to bring about federation in South Africa, was one of the most disastrous events in the history of those colonies. Perhaps I may be allowed to say that my noble friend, after he had determined upon his action, came across to me in this House and spoke to me about it. I told him I was entirely in favour of federation, but I condemned his action and told him his attempt would end disastrously, though I promised him I would put no impediment in his way. I regret to say that my prevision turned out to be well founded. I merely mention this by the way, but again I say it is not reasonable or fair to give exclusive credit to the Minister upon whom happens to devolve the duty of carrying a measure of this kind through Parliament. I do not wish to detract from the value of the service rendered by any Minister, but I do say it is not right to ascribe credit for the Bill to Mr. Chamberlain, or in fact to anyone in this country. With regard to Clause 74, I cannot help thinking, reading the clause as it stands here and referring to the clause as it stood in the original draft, and without professing to have any great legal knowledge, the difference is by no means large, and I have extreme doubt whether any particular advantage has been gained by all the controversy which has been set up. The clause as it stands is, no doubt, open to criticism, as my noble friend behind me has shown. The clause as it stood protected specially, in direct terms, any interest which might be outside the Australian colonies; the clause as it stands does not give that protection. Well, I am not saying that I attach very serious importance to it, but still you must set off one thing against another, and I doubt very much indeed whether much has been gained, while undoubtedly, although the whole matter has ended happily, some considerable risk was run in the course that was taken, and considerable apprehension was roused in the minds of many who were greatly in favour of the Bill. No doubt a settlement has been arrived at; no one rejoices more

than I do that that settlement has been arrived at, and that it is accepted by the colonies ; but I doubt very much whether anything was gained by running the considerable risk of questioning what the colonial referendum had approved. The fact that these numerous charges were made in the proposals laid before the other House showed, in my opinion, not any very judicious apprehension of the whole matter, nor do I think it showed any particular skill in negotiation or in the managing of the Bill. However, all's well that ends well ; and I am quite willing to congratulate the Colonial Secretary that this matter has ended as it has ended. The noble Lord on the Woolsack spoke very severely of my noble friend near me, and said, as I understood him, not only that he had made an attack upon Mr. Chamberlain, but also that he in point of fact had attacked the Bill. Now, I understood my noble friend to have as strong a feeling of approval of the Bill, speaking of the Bill generally, as any noble Lord in this House ; and therefore the matter turns entirely upon the attack which he made on Mr. Chamberlain. I think we cannot altogether exclude from our debates attacks upon statesmen in the other House, who sometimes are not very scrupulous in their attacks upon those who sit here ; and, although I think I may say that I have no particular tendency that way, yet I have heard in this House, in the course of my experience here, very severe attacks indeed made upon colleagues of mine by distinguished members of the Opposition. I shall not mention their names now, because, unhappily, they are no longer Members of this House, but they were very distinguished men of great authority—I mean the men who made the attacks—men who justly commanded admiration, not only from their own party, but, by reason of their ability, from those who opposed them ; and I certainly have heard not a few attacks which have been made of a very severe character indeed upon Members of the other House. I remember one to which I myself undoubtedly took exception, very much in the way that to-night exception has been taken to the remarks of my noble friend. It is always a very convenient thing to say, “Oh, you must not make an attack in this House upon a Member of the other House.” Well, for my own part, I confess that I would

always rather have my opponent facing me—that would be more agreeable to me and fairer to him ; but we cannot altogether exclude from our debates in this House comments upon the proceedings, the opinions, and even sometimes the character of public men who occupy high and distinguished positions in the other House, and I should protest against any doctrine that laid it down that such attacks should be altogether excluded. I say that entirely apart from the merit of the attack ; each case must be judged by itself ; attacks may be made which are not deserved, and attacks may be made which are deserved. My noble friend, I think, might have some ground for criticising the manner in which the negotiations were conducted, and I, myself, cannot help thinking that there was a great want of foresight in not having, during the time that these matters were under discussion in Australia, confidentially made known to the statesmen of that country, without interfering directly with them, what were the opinions held here upon so important and so very difficult a matter as the question of the appeal to the Privy Council. It seems to me that that kind of assistance ought to have been given to the Australian statesmen ; if they had been made aware of what was the opinion of the highest authorities in this country, which might easily have been conveyed to them two or three years ago, it might have led, not to a formal agreement embodied in despatches, but to the production of some clause which would have been accepted beforehand by all parties. I do not mean negotiations. I merely mean that they might have been made acquainted with the views of important people here in a confidential manner. My Lords, I have really nothing more to say to your Lordships, except again to repeat that I welcome this as a very great and most important measure ; and I believe, with the noble Earl who has just sat down, that it will tend to the augmentation of the prosperity and the contentment of our great colonies in Australia, that it will strengthen the whole Empire, and that, as he said most justly, it will lay the foundation of such a State as we may hope may eventually prove to be one of the most important branches of this Empire—taking part in the defence of the Empire, showing to us, by experiments

which they can easily try in a new community, and which we cannot so well try in an old community, what may be the best mode of dealing with the new problems which from time to time arise. And I look forward to the day when, if we continue to allow them to govern themselves in their own way, with as little interference with them as it is possible to exercise, this country will be surrounded by a number of great States, descended from us, which will form part of the Empire, but in point of fact will be close allies, bound to us not merely by ties of interest, but also by that strongest and most important tie—the tie of common kindred, common loyalty to a common Sovereign.

LORD JAMES OF HEREFORD: My Lords, this Bill has been subjected to different degrees of criticism, and those who have been connected with it have had their actions somewhat criticised. The speech of the noble Earl opposite, Earl Carrington, I think will live in the memories of most of us—at any rate, the humorous and good-natured portions of his speech; and I think we shall be disposed in the end to come to the conclusion that the noble Earl did not intend to attack very violently either the measure or the right hon. Gentleman who had charge of it in the other House. We learn from the noble Earl opposite that Lord Carrington is an enthusiastic supporter of this Bill—that he approves of it as much as the promoter of it. Why, then, the promoter of it was so attacked it is not worth while to discuss. One sentence in the speech of the noble Earl, the Leader of the Opposition, was somewhat superfluous—it was the statement that he was not in the habit of attacking his political opponents unduly, for I feel sure there is not a Member of this House who is not well aware that the noble Earl opposite is not apt to criticise political opponents unduly, and that he never makes an unfair attack upon those with whom he differs. Now may I call the attention of the House very briefly to what the criticism of the noble Earl opposite is? He does not object to the wording of the Bill; he does not object very much to the course taken by the Minister who had the principal charge of this Bill in the negotiations here; but it is rather a criticism of a negative character. Why, says the noble Earl,

did not the Colonial Secretary some two or three years ago make a communication in an informal manner to those who represented the colonies, and tell them what his thoughts were upon the subject? Now I appeal to the noble Earl's fairness, the admiration for which he has so truly won from the House. He goes back to the year 1897. In 1897 the representatives of the colonies came to this country, and the Colonial Secretary made to them exactly the communication which the noble Earl now says he ought to have made. He has stated in the House of Commons that he did take that course. Now, accepting as we do the very eloquent peroration of the noble Earl that we all agreed upon the beneficent objects of this Bill and the manner in which it has been conducted, do let it be noted that here in this Chamber the only criticism which the Leader of the Opposition has to make in respect of the Bill, or the conduct of it, is to complain that that was not done which was absolutely done in the very terms in which he says it ought to have been done. Mr. Chamberlain took the very course which the noble Earl says he ought to have taken; and I hope it will go forth that the course which the member of the Government who had charge of the Bill took was the very course that the noble Earl with all his experience and judgment and his knowledge of the colonies—having been in the Colonial Office—says ought to have been taken by those in charge of the Bill.

THE EARL OF KIMBERLEY: Will the noble Lord allow me to say one word? The Bill was not printed, if I remember rightly, in 1898. Of course, my view was that a communication ought to have been made upon the words of the Bill as it was provisionally framed—not that before the Bill was provisionally framed the matter should have been gone into. I said two or three years ago, and I was not far out in my dates, but that was what I meant.

LORD JAMES OF HEREFORD: I think the noble Earl's explanation leaves the matter as I put it; but was it not wiser for the Colonial Secretary to suggest his views and to state before the Bill was framed what his views were? If he had delayed doing so, would not the observation which fell from my noble friend Lord Jersey have come into effect—what would

the colonies have said if they had been interfered with by the home Government at the very time when they were in federation trying to agree upon a Commonwealth Bill? The Colonial Secretary really took the very course which the noble Earl himself says ought to have been taken. Now I desire to deal very briefly with some of the criticisms which fell from my noble friend Lord Davey. I am sure that here again we shall agree that all his criticisms were uttered in a spirit of good feeling towards this Bill. His first criticism was upon Clause 51. Of course that clause involves a great deal of overlapping, because there might be a conflict between the State Parliament, the Provincial Parliaments, and the Federated Parliament. Everyone has borne testimony to the way in which this Bill has been drawn in Australia. The noble Earl, Lord Carrington, said that the Secretary of State ought to have accepted the Bill *in totidem verbis*—that he ought not to have rejected anything.

LORD DAVEY: I think my noble friend has misunderstood me. I think I said expressly that the Bill excited my admiration; but I said that it was inevitable that there must be overlapping, not from any defect in the drawing of the Bill, but from the nature of the subject.

LORD JAMES OF HEREFORD: The noble Lord, I understood, maintained that Clause 51 would produce that result.

LORD DAVEY: Not from any defect in the drafting of the Bill.

LORD JAMES OF HEREFORD: It is not a matter of drafting, but I think my noble friend's attention cannot have been called to the very important consideration that those who drew the Bill in Australia saw that some overlapping might occur, because in Clause 109 they deal with this very difficulty. The clause says—

“When the law of the State is inconsistent with a law of the Commonwealth the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.”

So that they saw that very point, and they made provision for it. Overlapping, as my noble friend says, was inevitable from the nature of the question, but they provide that when it does occur the law of the Commonwealth shall prevail as against the law of the province. Now,

my Lords, only two other principal objections were taken by Lord Davey. I am sorry to detain your Lordships at all, and I will therefore be as brief as I possibly can. My noble friend said in the first place that there was a difference between the appeal which exists in Canada being given by the leave of the Privy Council and the appeal that was given by the leave of the High Court. That is so, but I should say that the method suggested by this Bill is the better. It is in favour of the colony. The suitor from Australia would have to come to this country and produce before the Privy Council here all his statements, in order to obtain his leave to appeal. It is easy to see what an expensive process this would be to the suitor living thousands of miles away. The High Court has all the necessary knowledge before it. It has the counsel engaged in the case, and it has full knowledge of the case, and then and there at the end of the case the application can be made, at no expense, probably, at all—at least, a very nominal expense. That is a great advantage to the colonial suitor, and is it not advisable to meet the wishes of the colonies upon this point, and to give to their Court the right of giving leave to appeal, rather than bring the suitor here this long distance to obtain that leave? It is nothing to say that on a matter of procedure of this kind—not a matter of principle—there would be a difference of procedure between Canada and Australia, if the interests of the Australian suitor have been considered. Now, only one other main objection was taken by my noble friend. He pointed out that under Clause 74—and I really think that this is the substance that we have to deal with—you will have an appeal from the State Court and you will have an appeal from the High Court.

LORD DAVEY: No; either to the High Court or to the Privy Council.

LORD JAMES OF HEREFORD: I said so—from the High Court to the Privy Council.

LORD DAVEY: From the State Court.

LORD JAMES OF HEREFORD: The objection my noble friend made is grounded entirely on this: that you will have a judgment of two co-ordinate

Courts, and that there will be no superior judgment of one Court only. If my noble friend will allow me for once to differ from him, I do not think that is so. I think that the decision of the Privy Council would prevail, and must prevail. The decision is the decision of the Queen. It is not the decision of any body of men—it is the decision of the Queen herself, the fountain of justice administering justice throughout her Empire both at home and abroad. No man delivers that judgment personally, it is delivered in the name of the Queen herself. There is an appeal from the High Court to the Privy Council, and as the Privy Council has the power of reversing the opinion of the High Court, not only by mere comity, but in fact, the decision of the Privy Council would be superior to and would affect the judgment of the High Court, and no judge of the High Court in Australia would presume to say that the judgment of that Court should prevail against the judgment of the Privy Council. This point has been fully considered by those whose judgment the Government had a right to rely upon, and it is their firm belief that that is the case. This is the view that, after remission of the state of things to the advisors of the colonies by their delegates, has been arrived at as a fair solution. I hope that the spirit which the noble Earl the Leader of the Opposition has shown us is the unanimous feeling of this House—that really there is nothing by way of criticism that ought to cast a doubt on the efficiency of this great measure, which has been placed in the position it occupies mainly by the great efforts and discretion of my right hon. friend Mr. Chamberlain.

LORD RUSSELL OF KILLOWEN:

My Lords, I do not propose at this hour, notwithstanding the importance of the discussion, to occupy your Lordships beyond a moment or two. I confess, having listened to the whole of this debate, there has seemed to me to be an air of unreality about it except in one respect, namely, in the concurrence—the gratifying concurrence—in all the speeches delivered on both sides of the House in rejoicing that this measure is about to receive the assent of the Imperial Parliament. I say the tone of the debate is unreal, because one cannot shut one's eyes to the fact that, recollecting the history of this Bill, the enormous

labour that its preparation involved, the necessity for the assents to the very terms of the Bill of so many widely diversified and widely apart interests, no one proposes to introduce an Amendment into the Bill, but we all understand that it is to be passed in the exact form in which it left the House of Commons; therefore our discussion is of an academic character. But I cannot pass without noticing the criticism of my noble and learned friend who has just sat down upon the speech of my noble friend near me (Lord Davey). The first point which it seems to me necessary to draw attention to is the effect of the original appeal clause as it stood in the proposition of the delegates. Now, I do not agree at all with my noble friend the Earl of Carrington, who opened the debate on this side of the House, in undervaluing, or regarding as an unimportant thing, the question of an ultimate appeal to the Queen in Council. On the contrary, I should have like to see this Bill give unrestricted rights of appeal, subject to the leave of the Privy Council, and subject to regulations with reference to the importance of the subject-matter in controversy and the like, but unrestricted liberty of appeal in every question in which other than purely Australian interests were concerned. For I regard that right of appeal to the Queen in Council not merely as an important indication of the Imperial Sovereignty of the United Kingdom, and of this Imperial Parliament as its mouthpiece, but also as a not unimportant factor operating in the direction of a uniformity of system of law between the home country and the colonies, and even a not unimportant factor, working in the direction as far as varying circumstances may properly admit, of something approaching uniformity in the law itself. Now, as the Bill was originally presented this was its effect: that appeals were allowed in all matters except certain constitutional questions there referred to, and even in those questions appeal was allowed to the Queen in Council where any public interest was involved. This is the exact effect of the original clause as it stood, which clearly recognised the Privy Council as the paramount court. What is the clause as it now is? The clause as amended is this—

“No appeal shall be permitted to the Queen in Council from a decision of the High Court

upon any question howsoever arising as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States or as to the limits *inter se* of the constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council. The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave."

Now, what is the result of that? The result of that is this—and it has not yet, I think, been stated to the House. The result is to do away absolutely with the exercise of the Queen's prerogative in every one of the cases coming within that exception. It cuts down the prerogative of the Queen. It is not that it leaves it open to the Queen by those who advise her to say whether any appeal shall or not be permitted, but it makes it impossible for the Queen to grant permission in such a case. You will recollect that in order to make it quite clear that this is the effect upon the prerogative of the Queen, the clause goes on to say—

"Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council.

What is the consequence of that? The first observation I make is this—and I speak upon the authority of those more conversant with the matter than I can pretend to be—that these so-called constitutional questions arise much more frequently in Canada as between the Dominion Parliament and the Parliaments of the Provinces, or between the Parliaments of the Provinces themselves, than between the Dominion Parliament and the Imperial Parliament. All those questions are now cut out of the appeal.

LORD JAMES OF HEREFORD: Except by leave.

LORD RUSSELL OF KILLOWEN: Yes! but leave of the High Court, not of the Privy Council. I most heartily agree in the observation of my noble and learned friend near me (Lord Davey) that one would have thought that the very class of question as to the limits of constitutional power as between the Commonwealth and

the States, or as between the States *inter se*, were eminently the class of cases which it was desirable from every point of view should be determined by a tribunal which stood aloof and apart from all questions of local interest and local prejudice. The third and last point to which I will call attention is this. While there is no appeal according to this clause from the High Court except by leave of that Court, in the cases mentioned, there is an appeal from the decision of the State Court to the Queen in Council, and thereupon arises the conflict to which reference has been made—which Court is to prevail? I do not seek to dogmatise upon this matter, as to which there are obviously, from what my noble and learned friend has said, different opinions; but I fail to see anything in this Bill asserting directly or indirectly that where the decision of the Privy Council conflicts with the decision of the High Court the decision of the Privy Council is to prevail. I see nothing to that effect expressed certainly, and nothing I think to be implied. When I remind your Lordships that the clause expressly says that the High Court shall be the final judge in the matter unless it chooses to give leave, surely that does lay a solid and reasonable foundation for the contention that it is thereby, as regards matters so dealt with in the clause, created the final Court, and therefore co-ordinate with the other final Court—namely, the Privy Council. It seems to me that that is a difficulty which will very likely arise. The High Court may well say, "We are co-ordinate in this matter, for the Imperial Parliament has said to us, 'You are to deal with it finally, unless you see some reason why you should not allow it to go further.'" Let me put an illustration. The High Court has dealt with a question coming before it in favour of a particular litigant; a question of a cognate character has arisen in another State Court, and that goes to the Privy Council; the Privy Council takes a different view. I think it is very doubtful how effect is to be given to that view by the High Court or in Australia. But suppose that in the province the decision of the High Court has been acted upon, rights adjudicated upon, interests transferred under that decision, how is all that to be undone? It seems to me that the conflict is inevitable. I admit that in other cases, outside the classes of cases

as to which the High Court has exclusive jurisdiction, I think there is ground for saying that the Privy Council is the paramount controlling Court; but in the case I have put I cannot help thinking that difficulty may arise. I will only trouble your Lordships with this concluding observation. As a Home Ruler, which I am—I may be allowed to profess it in these days when it is not so popular as it once was—as a Home Ruler I rejoice at this Bill; I am delighted to see that the fullest powers are given to Australia to work out its own destiny by its own methods, and I have no doubt that it will be able to work out that destiny and fulfil it in complete harmony with the great interests of the Empire.

VISCOUNT KNUTSFORD: I will not detain your Lordships for more than two minutes, but as I may not be able to be present at other stages of this Bill, I would like to say one word upon it, as one who has a genuine interest in the question, and who, whether in office or out of office, has constantly urged upon Australian statesmen that they should endeavour to find a solution of these difficulties. The last speaker said that in some points of view this debate is not real; but I can assure him—and I am speaking for every noble Lord present now—that as to our satisfaction at this great question having been settled the debate is very real indeed. The difficulties in arriving at a solution of the many questions were very great—indeed, perhaps they have hardly been appreciated by those in this country who have not studied colonial questions. At one time there was, no doubt, an impatience of the delay, and a fear that the difficulties might not be overcome. In one sense it is a good thing, perhaps, that there has been that delay, because it is a good omen that this great Commonwealth has been established by law in a year in which the colonies have shown their sympathy with the mother country, and their loyalty to the Empire, and it is therefore not, perhaps, to be regretted that there has been some delay and some prolonged consideration of the question. Then, my Lords, the only other observation I would make is this. We all wish God-speed to the new Commonwealth, not only in their own interests, but in the interests of the Empire; and if good sense and conciliatory spirit and toleration are shown in the management of

the Commonwealth as they have been shown in getting over and solving the detailed difficulties in the course of the discussions in Australia and in this country, I am quite satisfied that there can be no doubt of the success of the Commonwealth. I for one most heartily desire that that success shall be complete.

LORD BRASSEY: My Lords, if I venture to add two words it is because the last Convention, to whose labours we owe the Commonwealth Bill, was held in Melbourne, and I am reluctant to allow the opportunity to pass by of bearing to your Lordships the testimony of an eyewitness to the patriotic spirit, the ability, the patience, the mutual forbearance, and the entire absence of party spirit which marked all the proceedings of that Convention.

On Question, agreed to. Bill read 2^a accordingly, and committed to a Committee of the whole House on Tuesday next.

HOUSE OF LORDS.

Tuesday, 3rd July, 1900.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

House in Committee (according to Order). Bill reported without amendment. Standing Committee negatived; and Bill to be read 3^a on Thursday next.

HOUSE OF LORDS.

Thursday, 5th July, 1900.

COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

[THIRD READING.]

Order of the Day for the Third Reading read.

Moved, "That the Bill be now read a third time."—(*The Earl of Selborne.*)

LORD STANMORE: My Lords, before this Bill is read a third time and passes finally from the cognisance of this House, I should like to ask for an explanation from Her Majesty's Government of some

of the terms employed in the fifty-first section in regard to the subjects with which the Commonwealth Parliament is empowered to deal. Those subjects are very numerous, and for the most part require very little explanation, but there are one or two points about which I think it is only right that your Lordships should receive some information as to the meaning attached to the words, on the one hand by Her Majesty's Government, and on the other hand by the Governments of the Australian Colonies. I wish, first of all, to call attention to the words "external affairs." How are these words to be interpreted? They may be interpreted in a vastly extended sense or in a very restricted one. I wish to know what interpretation Her Majesty's Government place on them and what interpretation the Governments of the Australian Colonies put upon them. Do these words mean that the Legislature of the Commonwealth may, if they like, appoint consuls and diplomatic agents in different parts of the world? It would be satisfactory to know to what extent the external affairs of the colonies are to be placed under the control of the Legislature and Government of the Commonwealth, because it may be held by some to be a power which I do not think your Lordships intend to confer. This is not altogether a speculative question, because I remember very well many years ago, when I was more conversant with the opinions of Australian statesmen than I can now boast of being, there were many very distinguished Australian public men who held that it was the right of the colonies that they should conduct their own external affairs, and who were eager to attain that object, and I do not believe that that wish has altogether died out. The next item is also one with regard to which I think some explanation would at least be acceptable—I do not say it is absolutely necessary. Under that clause the Commonwealth Parliament are also enabled to legislate with regard to "The relations of the Commonwealth with the islands of the Pacific." These are very large words. There are many classes of islands—lands which either belong to or are more or less under the influence of Great Britain, islands which are independent, islands which are the property of foreign Powers, and one group of islands which form a separate British colony. Is it intended

that the Commonwealth is to have power to legislate with regard to all these islands? I presume not. No one would suggest that the Commonwealth Parliament should have power to legislate with regard to the relations existing between the Australian colonies and those islands of the Pacific which are the property of foreign nations. It is desirable that we should not be committed to vague words which may mean many things, and in connection with which questions may be raised to the great inconvenience of administration. The Commonwealth Parliament is also empowered to legislate as to "Fisheries in Australian waters beyond territorial limits." I confess I do not understand how they can have jurisdiction beyond the territorial limits, because the waters beyond those limits form part of the high seas. I cannot sit down without expressing that fervent hope, which I am sure everyone who has had any connection with the Australian colonies must feel from the bottom of his heart, that this great measure may be one attended with all the success and lead to all the benefits which its authors have anticipated.

THE EARL OF SELBORNE: My Lords, the noble Lord who has just addressed you must remember, if he kindly will, what the scheme of Sub-section 51 is. It is a scheme to confer upon the Commonwealth Parliament a concurrent right of legislation with the Legislatures of the Australian States, and I am advised that "external affairs" in this connection mean neither more nor less than the right of dealing with that which has hitherto been dealt with by the Australian Colonies, which in future will become the Australian States. It is certainly not intended by the authors of this Bill that these words should be stretched so as to invest Australia with the paraphernalia of consuls and ambassadors separate from the British Empire. As regards the question of the relations of the Commonwealth with the Islands of the Pacific, those words are imported directly from the Federal Council of Australia Act, 1885. It is a simple transfer of the jurisdiction conferred in that Act upon the Federal Council to the Commonwealth Parliament. Section 15 of that Act began as follows—

"Saving Her Majesty's prerogative, and subject to the provisions herein contained,

with respect to the operation of this Act, the Council shall have legislative authority in respect of the several matters following."

The first matter was the relations of Australasia with the Islands of the Pacific. That is a mere transfer from one Act to the other, and the spirit in which it has been introduced and is intended to be worked by the authors of this Bill is the same as that which animated the authors of the Federal Council Act. I do not think it would be possible to lay down a strict rule beforehand as to the exact scope of this provision, but I do not think there is any more reason to suppose that this sub-section will be abused than there was danger that the Federal Council would abuse the powers conferred upon them. Before I sit down I should like to refer very briefly to one or two points that arose in the debate on the Second Reading in connection with Clause 74. The noble Lord who followed me in the debate (Earl Carrington) will pardon me for saying that he seemed completely unaware of the doubts and difficulties which had arisen over the original wording of Clause 74. He seemed to be absolutely at sea as to the questions which were really discussed by the delegates and Her Majesty's Government, and I do not think he at all apprehended that in the attitude he was taking up he was putting himself in a position of opposition to the prevailing Australian public opinion. There were several objections to the clause apart from the points specially emphasised by Mr. Chamberlain in another place. One objection was that the interpretation of the clause was, at any rate, doubtful. If your Lordships refer to page 17 of Blue-book 158, which contains copies of the Memoranda furnished to Her Majesty's Government by the Australian delegates, you will see that it is asserted that the clause as brought to this country did not in any way impinge on the right of appeal to the Privy Council, except in a limited number of constitutional cases; but that was merely a question of opinion. It was open to argument that the right of appeal from the State Courts was abrogated altogether, and it was also open to argument that it was only abrogated in cases in which the Constitution might be supposed to be affected. It is not for me, being a layman, to give any opinion as to which of these views was the wisest or most sound. I only

mention them to show that there was a real doubt as to the meaning of the clause as brought to this country, and, whatever may be thought of the ultimate shape the clause has assumed, your Lordships must admit that the right of appeal is reserved in all cases, and that the only question is whether it was wise or unwise to leave it to the High Court of Australia to decide whether in a certain class of cases an appeal should lie. I was asked very pointedly why the provision which appeared in the original clause, "unless the public interests of some part of Her Majesty's dominions other than the Commonwealth or State are involved," was omitted from the clause as it stands at present. The reason is that it did not seem to Her Majesty's Government, in consultation with the delegates, that the words were any longer necessary, because any such case can now be taken direct to the Privy Council from the Supreme Court of a State, or, if it goes to the High Court of the Australian Commonwealth, it can be taken to the Privy Council by leave of the High Court, and Her Majesty's Government have absolute confidence in the discretion of the High Court. Great stress was laid upon the point that it might be held in the future that the High Court was a co-ordinate court with the Privy Council so far as the interpretation of the Constitution in a particular class of cases was concerned, and some doubt was felt as to the accuracy of my statement that there were precedents in the judicature of this country for allowing an inferior court to be the deciding authority as to whether there should be an appeal to a higher court. I find in the Judicature Act of 1873 that—

"All appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act have been brought to any Court or Judge whose jurisdiction is by this Act transferred to the High Court, may be heard and determined by Divisional Courts of the High Court, consisting respectively of such of the Judges thereof as may from time to time be assigned for that purpose, pursuant to the rules of Court, or (subject to rules of Court) as may be so assigned according to arrangements made for the purpose by the Judges of the High Court. The determination of such appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard."

That was a direct case in which the leave to appeal to the Court of Appeal was to be given by the lower or inferior Court. That enactment remained in force for, I believe, something like twenty years, when an Amendment was introduced by which the leave to appeal to the Court of Appeal may be given by the Court of Appeal as well as by the inferior Court. There is another precedent in questions of bankruptcy—and in this matter there has been no change in the law—in which an appeal lies to the House of Lords on the leave of the Court of Appeal. It is not the House of Lords which gives the leave to appeal, but the Court of Appeal. In neither of these cases has the inferior Court been held to be co-ordinate with the Court above it. The Lord Chief Justice, in arguing this question, laid great stress on the words “final and conclusive.” I have carefully looked up what the noble and learned Lord said, as reported in *The Times*, and I think I am not misrepresenting him when I say that his argument was to the effect that there could be no doubt that the Privy Council would, in all matters including the interpretation of this Act, be held to be the final authority, except in that limited class of cases defined in Clause 74, in which leave to appeal to the Privy Council is left to the discretion of the High Court. In that class of cases, and in that class of cases alone, the noble and learned Lord said he had a fear that it might be held that the High Court of Australia was a co-ordinate court with the Privy Council. The Lord Chief Justice, if he will pardon me for saying so, was speaking without having the exact words of the clause in his hand, because the words “final and conclusive” do not appear in that particular clause, but in the previous clause, in relation not to those special points on which the High Court is to give leave to appeal, but to the much larger class of cases in which the Lord Chief Justice himself admitted that there could be no doubt that the authority of the Privy Council would be supreme. Therefore, whether his contention was right or wrong, he cannot rest it on the insertion of the words “final and conclusive,” because they do not appear at all in the clause to which he was referring. I have been rather rash, as a layman, in mentioning these points, but I could not pass over in silence arguments which I

venture to think were faulty. I cannot see how it can possibly be contended that there can be any superior judicial authority in Her Majesty's Dominions than Her Majesty herself, the fount of all justice; and I am advised—and as a humble student of history I have always understood—that the decision of the Privy Council is the most direct form of expression of the judicial authority of the Crown, and that there is no precedent in the history of the judges of our race for setting up the authority of any Court deriving its judicial functions from Her Majesty over that direct expression of Her Majesty's own opinion which is to be found in the decisions of the Privy Council. This is the final stage of this great measure in your Lordships' House. What the future has in store for Australia few of us will venture to measure; but perhaps we can exercise our imagination, and try to judge what the future of Australia will be by endeavouring to conjecture how different would have been the development of the thirteen petty American States if they had not become the great United States of America; and I am sure your Lordships will join with me, re-echoing that watchword of Australia, “Advance, Australia,” in the hope that Australia united will, with Canada, and, I hope, in the not far distant future, with South Africa, be a partner with the United Kingdom in the great work that lies before it.

THE EARL OF KIMBERLEY: My Lords, it would have been more satisfactory if the noble and learned Lords who usually sit behind me had been present when the noble Earl thought fit to make this statement in answer to what was said by them on the Second Reading of the Bill, but unfortunately they are not here. I can assure the noble Earl that there is a very strong feeling on this side of the House, and I believe among many people, that the Bill as it is now framed is not only not an improvement on the point of the appeal to the Privy Council, but is distinctly less satisfactory, than the Bill as it originally stood. In the original Bill Clause 74 declared that no appeal should be permitted to the Privy Council in any matter involving the interpretation of the Constitution, unless the public interests of some part of Her Majesty's dominions, other than the

Commonwealth of Australia, were involved. It appeared to many of us, and certainly to me, that the provision which was introduced in the original Bill by the Australians was animated by a desire to guard to the utmost possible extent against any interference by the Australian Commonwealth in matters of public interest outside Australia itself. To the ordinary man that appears to be a far better safeguard than what is now in the Bill. You have said that no appeal in certain cases should be allowed unless that appeal is permitted by the High Court itself. I have, of course, like all your Lordships, perfect confidence in the integrity and knowledge of the learned judges who will constitute the High Court of Australia, but anyone, I think, who knows what human beings are cannot but see that any tribunal which is appointed for the ordinary administration of justice stands in quite a different position when they themselves are to be the judges, as to whether or not there should be an appeal in matters affecting their own court. I cannot conceive any task more difficult or invidious to fulfil. I can easily imagine that in certain cases there may arise a feeling of dissatisfaction with the decision of the Court, and that people may say the appeal ought to have been allowed. That seems to me a point of great importance. I am obliged to say that I have neither seen nor heard any answer to the arguments of my noble friends the Lord Chief Justice and Lord Davey; and many of us who have paid what attention we could to this Bill are still lost in astonishment that there should ever have been raised this controversy with the Australian colonies. In my belief it would have been far better, safer, and wiser to have accepted the Bill as it stood. I would not have blamed Her Majesty's Government for taking care that the right of appeal was fully preserved. That was a matter of so high importance that it was a very fair subject for consideration; but, if they had considered it from the point of view that they should have done, they would have found there was no necessity for raising the controversy. Although the controversy is now, happily, ended—and we all know that the result is acceptable to the Australian colonies—yet there was a moment when there was very serious apprehension lest there might be difficulties raised in Australia which might possibly wreck the whole scheme. I again repeat that I do not understand for what possible reasons this controversy was raised. The only explanation we can invent may possibly be ill-founded—it is that the first intention of those who objected to the Bill as it stood was to preserve the right of appeal altogether intact. It was found that that raised a very serious and very great difficulty as regards the colonies themselves. Then we saw with astonishment the Colonial Secretary appealing to newspapers in the colonies against the opinion of the Colonial Governments and the whole Australian people—one of the most imprudent and objectionable things I have ever known done by a responsible Minister of the Crown in a matter of this importance.

THE EARL OF SELBORNE: The noble Earl has forgotten that the Governments thanked the right hon. Gentleman for what he had done.

THE EARL OF KIMBERLEY: Then they were thankful for small mercies. It was a matter of great relief to them that he had come back to something they could accept. When it was found that the original course intended was impossible, it became necessary to find some way out which might save the credit of the Minister who had charge of the matter. I admit and admire the ingenuity with which it was done. The first attempt, which was communicated to the House of Commons, and was stated to be entirely satisfactory, broke down altogether, and then, at last, very ingeniously, and, I think, with wisdom, what is called a compromise was hit upon. I say it was ingenious. It was ingenious to find out such a contrivance, and it was wise, because it turned out to be something the Australian colonies could accept. But the conduct of the matter was not such as to excite any very great admiration. I am very glad the Bill has arrived at this the last stage, and I assure your Lordships I would not have referred to the controversy at all if the noble Earl the Under Secretary for the Colonies had not seen fit to comment upon it.

THE LORD CHANCELLOR (The Earl of HALSBURY): My Lords, I do not share with the noble Earl the opinion that Clause 74 as it originally stood was better than it has since been made. I

may, perhaps, venture to suggest to the noble Earl that if he had had to construe as a judge the words "public interests of some other part of Her Majesty's dominions," he would have found considerable difficulty. I myself took great exception to the phrase, and, again, with reference to what he calls an invidious course—that of calling upon a court to say whether there should be an appeal from it or not—I would ask the noble Earl whether he has not heard of such a provision before. There is hardly a court in the country in which exactly that provision does not exist. It exists in courts of quarter sessions, in courts of summary jurisdiction, in courts of first instance, and in courts of appeal. Those courts have from time to time exercised the very discretion contemplated here. It may be true that on some occasions people have said, "Oh, that Court was wrong; it ought to have allowed an appeal"; but on the whole the discretion is supposed to be exercised wisely and impartially. The question of the true construction of the Act, which was raised on the Second Reading by the Lord Chief Justice and Lord Davey, is one upon which any intelligent laymen is as well able to form an opinion as a lawyer. The point, apparently, is that there are some matters reserved for the Court in Australia, and reserved in the sense that its decision is final. So far as that particular case is concerned, of course the fact of the reservation by the statute prevents the particular case ever being brought up again anywhere else. That is perfectly true. But the important question which was suggested was that if the Court in Australia gave a different decision from some decision in this country—not in a particular case, because, of course, that could not arise, but in some equivalent case—it might be said that there was no authority in the Supreme Court of this country to overrule, in the sense of saying that was not the law. I think in making this statement the noble Lords have not sufficiently considered this point. The Supreme Court must ultimately declare the law, and that law must be final in all courts.

LORD MORRIS: I was unable on the Second Reading, owing to illness, to take part in the discussion on this Bill, but I should not like it to pass without

making a few observations upon it. I regret extremely that Clause 74 was ever introduced into the Bill, and, having been introduced, that it was not deleted. I heard the speech of the Colonial Secretary in the House of Commons, and I was convinced in my own mind of the absolute danger of meddling at all with the appeal to the Queen. The noble Earl opposite has asked why this clause was not struck out. He ought to have a very good opportunity of supplying the answer, which is an obvious one. It is, that immediately the Colonial Secretary suggested that Clause 74 should be deleted—which in my humble opinion would have been the best course for the Australians themselves, and which was manifestly in accordance with the opinion of the greater part of, if not the entire, judiciary and Bar of Australia, and of all the persons who understood the subject—the Leader in the House of Commons of the party which the noble Earl opposite represents in this House attempted to make party capital out of the suggestion by saying that the Colonial Secretary had flouted the Australians. That the course which the Colonial Secretary took was the proper course in the opinion of experts that right hon. Gentleman endeavoured to prove by referring to general sources of information, such as newspapers, etc., which I have often heard quoted as sources of information open to everybody, although it has been suggested this evening by the noble Earl that it was unworthy and unbecoming to refer to them. The proposal to get rid of Clause 74, and to leave the right to appeal to Her Majesty in Council to every subject of Her Majesty who thought he was injured in person or property, was called flouting the Australians, and it was quite obvious to me that, if the clause had been struck out, "Who flouted the Australians?" would have been raised as a party cry. A change was forced upon the Colonial Secretary by the position taken by the Leader of the Opposition in the House of Commons, and which the rank and file of his party appeared quite ready to follow up. I regret extremely that the clause was not left out, and the right of appeal in Australia allowed to stand on the same footing as the right of appeal in Canada. It has been said that it is a novel thing for an inferior court to have the power of giving leave to appeal to a superior

court. In the case of landed property in Ireland it is not considered so extraordinary that there should be no appeal from the Land Commission Court without their own leave. I join heartily in the chorus of admiration which has found expression among all parties in regard to this Bill.

LORD ALVERSTONE: My Lords, I would crave your Lordships' indulgence for a few moments while I express my opinion on the point raised by the noble Earl the Leader of the Opposition. I am one of those who would have been most anxious to preserve the original right of appeal; not so much in the interests of the United Kingdom as in the interests of the colonies of Australia themselves. I have had personal experience of the great value the right of appeal was to Canada, and I know that grave political questions, which excited great public attention, were disposed of by the Judicial Committee of the Privy Council in a way which was satisfactory to all. But that is not the issue now raised. The noble Earl has given the great weight of his opinion, which I very much regret, to the view that the form in which the Bill was brought to this country by the Australian delegates was better than the form in which it now stands. I happen myself to have taken part in all the preliminary discussions in regard to the Bill, and I would ask your Lordships to permit me to present one or two arguments which, I think, should satisfy independent minds that the view presented by the noble Earl is not right. The noble and learned Lord on the Woolsack has already referred to the difficulty of construing the clause as it originally came to this country, but that was not the way in which the difficulty was presented to those of us who had to do with the negotiations. It was practically admitted by those who were at that time arguing for the possibility of retaining the clause that an appeal might be debarred in the case of most important interests, such as those of great shipping companies. It was conceded by those with whom we discussed the matter that such important interests would not fall within the words, "the public interest of some part of Her Majesty's dominions." Very grave doubt also was felt whether or not the appeal from the Colonial Courts, as well as from the High Court of the Common-

wealth, was interfered with. The Colonial Secretary and those associated with him accordingly endeavoured to induce the delegates to agree to Clause 74 being cut out altogether. I am aware that we were not able to attain the full object we had in view, but the noble Earl has expressed the opinion that the clause as it now stands is less advantageous. The analogy of Canada has been quoted, but there is a marked difference. In Canada the rights of legislation between the Dominion and the provinces were carefully defined by sections in the North American Act, but under this Bill there will be to a certain extent co-equal powers between the States and the Commonwealth. Therefore there was a substantial ground for asking—if a question does arise between the Commonwealth and the State as to the powers of the respective Legislatures—is not that a matter which you could safely leave to the High Court to deal with? Accordingly the words were agreed to that—

"No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question howsoever arising as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States or as to the limits *inter se* of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council."

That was a concession made to the feeling of Australia, and if I take that by itself I do not think the noble Earl would be able to say that it is not far preferable to leave the right of appeal standing generally, and to limit the express and particular point which was to be left to the High Court. One leaves the right of appeal standing, with an exception which is actually expressed in the Bill; the other would have made it necessary, in order to allow an appeal to be brought, to satisfy that extraordinary provision, "the public interests of some part of Her Majesty's Dominions." An advantage having, I would humbly submit, been gained by preserving the right of appeal and by limiting the particular questions which might be dealt with by the High Court of the Commonwealth, we have to consider whether there is anything in a subsequent part of the clause which in any way deprives the subjects of the Queen of the advantage, which I trust I have demonstrated, the Bill in its altered

form gives them. The next paragraph in the clause provides that—

“The High Court may so certify, if satisfied, that for any special reason the certificate should be granted and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.”

In the interest of Australia I should have been glad to see the colonies and the Commonwealth, or persons interested in questions that may arise between them, free to appeal to the Privy Council—and I hope that view may still find weight with the Australian Commonwealth—for in times of great political excitement it is especially valuable that leave to appeal to the Privy Council may be given; and I do not doubt that when great political questions arise every member of the High Court will feel it his duty to accept the guidance of this impartial tribunal, which can be relied upon to decide the questions free from any bias or political agitation. It is said that you impair the dignity of the Privy Council and run some risk of its decisions not being followed, because leave is given in this particular case to appeal. I share with the noble and learned Lord the Lord Chancellor a feeling of astonishment that such views should have been placed before your Lordships as were put forward by the Lord Chief Justice and Lord Davey. I regret I was not here on the Second Reading of the Bill, and I am sorry that the noble and learned Lords are not in their places to-day. Appeals have been given by inferior Courts to higher Courts in the circumstances mentioned by the Lord Chancellor and others, and I have never yet heard it suggested that the Court which had given the leave afterwards felt itself justified in declining to obey the rule of law laid down by the Court to which it had given leave to appeal. Lord Davey, I understand, suggested that there would be two sorts of Courts of Appeal in which the Jurisdiction would appear to be co-ordinate. I venture respectfully to suggest that the experience of the world is contrary to that view, and I do not

hesitate to say that every lawyer, at any rate, who follows the traditions of our profession, sitting in the High Court of the Commonwealth would feel it his bounden duty to follow the decision of the Privy Council. I think the noble Earl will agree that, if I have pointed out, as I trust I have, that far wider rights of appeal are reserved, and are kept alive under the existing form of the Bill than would have existed under the Bill as introduced, and if I have pointed out that the door is open in times of political agitation for the High Court to send questions to be decided by an impartial tribunal, almost every argument he has used in support of the view that the Bill as now presented to the House is inferior to the Bill as it was brought to this country is cut away. I apologise for having troubled your Lordships at such length. But, believing as I do that in the interests of the colonies, quite as much as in the interests of Great Britain, it is desirable that the right of appeal should not be interfered with, I am satisfied that the clause as it now stands is a vast improvement upon the form in which it was brought over by the delegates from the colonies. It is because I hold that opinion strongly that I have ventured to raise my voice, for the first time in your Lordships' House, in opposition to the view of the noble Earl.

On Question, agreed to. Bill read 3^a accordingly, and passed.

HOUSE OF LORDS.

Monday, 9th July, 1900.

ROYAL ASSENT.

COMMISSION.

The following Bill received the Royal Assent:—

Commonwealth of Australia Constitution.

**BILL INTRODUCED INTO
PARLIAMENT BY MR. SECRETARY CHAMBERLAIN.**

Where alterations were made in the draft Bill received from Australia, the clauses of the Australian draft are printed in italics.

B I L L

TO

A.D. 1900.

Constitute the Commonwealth of Australia.

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland :

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

Preamble.

Whereas the people of [here name the Colonies which have adopted the Constitution], humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Commonwealth of Australia Constitution Act.

Act to extend to the Queen's successors.

2. The provisions of this Act and of the Constitution set forth in the schedule to this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

Act to bind Crown, and extend to the Queen's successors.

II. *This Act shall bind the Crown, and its provisions referring to the Queen shall extend to Her Majesty's Heirs and Successors in the Sovereignty of the United Kingdom.*

Proclamation of Commonwealth.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than *one year* after the passing of this Act,

the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

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4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several Colonies may at any time after the *passing of this Act* make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Commence-
ment of Act.

5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State: and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Operation of
the constitu-
tion and
laws.

Notwithstanding anything in the Constitution set forth in the schedule to this Act, the prerogative of Her Majesty to grant special leave to appeal to Her Majesty in Council may be exercised with respect to any judgment or order of the High Court of the Commonwealth or of the Supreme Court of any State.

V. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the Courts, Judges, and people of every State, and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted whose first port of clearance and whose port of destination are in the Commonwealth.

Operation
of the Con-
stitution
and laws.

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act, and the laws of the Commonwealth shall be colonial laws within the meaning of the Colonial Laws Validity Act, 1865.

Definitions.

"Colony" shall mean any colony or province.

28 & 29 Vict.
c. 63.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called "a State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Repeal of
Federal
Council Act.
48 & 49 Vict.
c. 60.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

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Application
of Colonial
Boundaries
Act.
58 & 59 Vict.
c. 34.

Constitution.

Constitution
and its
Divisions.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

9. Subject to the foregoing provisions, the Constitution of the Commonwealth shall be as set forth in the schedule to this Act.

IX. The Constitution of the Commonwealth shall be as follows:—

THE CONSTITUTION.

This Constitution is divided as follows:

CHAPTER I.—THE PARLIAMENT:

PART I.—General:

PART II.—The Senate:

PART III.—The House of Representatives:

PART IV.—Both Houses of The Parliament:

PART V.—Powers of The Parliament:

CHAPTER II.—THE EXECUTIVE GOVERNMENT:

CHAPTER III.—THE JUDICATURE:

CHAPTER IV.—FINANCE AND TRADE:

CHAPTER V.—THE STATES:

CHAPTER VI.—NEW STATES:

CHAPTER VII.—MISCELLANEOUS:

CHAPTER VIII.—ALTERATION OF THE CONSTITUTION:

THE SCHEDULE.

SCHEDULE.

THE CONSTITUTION.

This Constitution is divided as follows:—

Chapter I.—The Parliament:

Part I.—General:

Part II.—The Senate:

Part III.—The House of Representatives:

Part IV.—Both Houses of the Parliament:

Part V.—Powers of the Parliament:

Chapter II.—The Executive Government:

Chapter III.—The Judicature:

Chapter IV.—Finance and Trade:

Chapter V.—The States:

Chapter VI.—New States:

Chapter VII.—Miscellaneous:

Chapter VIII.—Alteration of the Constitution.

CHAPTER I.

THE PARLIAMENT.

PART I.—GENERAL.

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is herein-after called "The Parliament," or "The Parliament of the Commonwealth."

Chap. I.
The Parliament.Part I.
General.Legislative
power.

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

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Governor-General.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

Salary of Governor-General.

The salary of a Governor-General shall not be altered during his continuance in office.

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

Provisions relating to Governor-General.

5. The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may, in like manner, dissolve the House of Representatives.

Sessions of Parliament. Prorogation and dissolution.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

Summoning Parliament.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

First session.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

Yearly session of Parliament.

PART II.—THE SENATE.

Part II.
The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

The Senate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

Qualification of electors.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

Method of election of senators.

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.

Times and places.

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Application of
State laws.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

Failure to
choose senators.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

Issue of writs

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

Rotation of
senators.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the date of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.

Further pro-
vision for rota-
tion.

14. Whenever the number of Senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

Casual vacan-
cies.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as herein-after provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any Senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.

Qualifications
of senator.

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.

Election of
President.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of
President.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

19. A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

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Resignation of senator.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy by absence.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth, the Governor-General shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Vacancy to be notified.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Quorum.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Voting in Senate.

PART III.—THE HOUSE OF REPRESENTATIVES.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

Part III.
House of Representatives.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

Constitution of House of Representatives.

- (i.) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators.
- (ii.) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Provision as to races disqualified from voting.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:

Representatives in first Parliament.

New South Wales	-	-	-	-	-	twenty-three;
Victoria	-	-	-	-	-	twenty;
Queensland	-	-	-	-	-	eight;
South Australia	-	-	-	-	-	six;
Tasmania	-	-	-	-	-	five;

Provided that if Western Australia is an Original State, the numbers shall be as follows:—

New South Wales	-	-	-	-	-	twenty-six;
Victoria	-	-	-	-	-	twenty-three;
Queensland	-	-	-	-	-	nine;
South Australia	-	-	-	-	-	seven;
Western Australia	-	-	-	-	-	five;
Tasmania	-	-	-	-	-	five.

A.D. 1900. <i>Representatives in first Parlia- ment.</i>	26. Notwithstanding anything in section twenty-four the number of members to be chosen in each State at the first election shall be as follows: (To be determined according to the latest statistical returns at the date of the passing of the Act, and in relation to the quota referred to in previous sections.)
Alteration of number of members.	27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.
Duration of House of Repre- sentatives.	28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.
Electoral divisions.	29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of numbers to be chosen for each division. A division shall not be formed out of parts of different States. In the absence of other provision, each State shall be one electorate.
Qualification of electors.	30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.
Application of State laws.	31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.
Writs for general election.	32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives. After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.
Writs for vacancies.	33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker, or if he is absent from the Commonwealth, the Governor-General in Council may issue the writ.
Qualifications of members.	34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:-- (i.) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen. (ii.) He must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.
Election of Speaker.	35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.
Absence of Speaker.	36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

37. A member may by writing addressed to the Speaker or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

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Resignation of member.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament, he, without the permission of the House, fails to attend the House.

Vacancy by absence.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Quorum.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Voting in House of Representatives.

PART IV.—BOTH HOUSES OF THE PARLIAMENT.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Part IV.
Both Houses
of the
ParliamentRight of electors
of States.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

Oath or affirmation
of allegiance.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

Member of one
House ineligible
for other.

44. Any person who—

Disqualification.

(i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power : or

(ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer : or

(iii.) Is an undischarged bankrupt or insolvent : or

(iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth : or

(v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons :

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv. does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

45. If a senator or member of the House of Representatives—

Vacancy on
happening of
disqualification.

(i.) Becomes subject to any of the disabilities mentioned in the last preceding section : or

(ii.) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors : or

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(iii.) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State :

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Disputed elections.

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

Allowance to members.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Privileges, &c., of Houses.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members of the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Rules and orders.

50. Each House of the Parliament may make rules and orders with respect to—

- (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld :
- (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

Part V.
Powers of the
Parliament.

Legislative
powers of the
Parliament.

PART V.—POWERS OF THE PARLIAMENT.

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to—

- (i.) Trade and commerce with other countries, and among the States :
- (ii.) Taxation ; but so as not to discriminate between States or parts of States :
- (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth :
- (iv.) Borrowing money on the public credit of the Commonwealth :
- (v.) Postal, telegraphic, telephonic, and other like services :
- (vi.) The naval and military defence of the Commonwealth, and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth :
- (vii.) Lighthouses, lightships, beacons, and buoys :
- (viii.) Astronomical and meteorological observations.
- (ix.) Quarantine :
- (x.) Fisheries in Australian waters beyond territorial limits :
- (xi.) Census and statistics :
- (xii.) Currency, coinage, and legal tender :
- (xiii.) Banking, other than State banking ; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money :
- (xiv.) Insurance, other than State insurance ; also State insurance extending beyond the limits of the State concerned :
- (xv.) Weights and measures :
- (xvi.) Bills of exchange and promissory notes :

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- (xvii.) Bankruptcy and insolvency :
- (xviii.) Copyrights, patents of inventions and designs, and trade marks :
- (xix.) Naturalization and aliens :
- (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth :
- (xxi.) Marriage :
- (xxii.) Divorce and matrimonial causes ; and in relation thereto, parental rights, and the custody and guardianship of infants :
- (xxiii.) Invalid and old-age pensions :
- (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States :
- (xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States :
- (xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws :
- (xxvii.) Immigration and emigration :
- (xxviii.) The influx of criminals :
- (xxix.) External affairs :
- (xxx.) The relations of the Commonwealth with the islands of the Pacific :
- (xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws :
- (xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth :
- (xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State :
- (xxxiv.) Railway construction and extension in any State with the consent of that State :
- (xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State :
- (xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides :
- (xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law :
- (xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia :
- (xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

Exclusive powers of the Parliament.

- (i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes :
- (ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth :
- (iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other

Powers of the Houses in respect of legislation.

A.D. 1900

pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Appropriation Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Tax Bill.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare,

according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

A.D. 1900.

The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Recommendations by Governor-General.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

Disallowance by the Queen. Signification of Queen's pleasure on Bill reserved.

CHAPTER II.

THE EXECUTIVE GOVERNMENT.

Chap. II.
The Executive Government.

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Executive power.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Federal Executive Council.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Provisions referring to Governor-General.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Ministers of State.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or become a senator or a member of the House of Representatives.

Ministers to sit in Parliament.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Number of Ministers.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Salaries of Ministers.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

Appointment of civil servants.

A.D. 1900.

Command of
naval and
military forces.
Transfer of
certain
departments

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth :—

Posts, telegraphs, and telephones :

Naval and military defence :

Lighthouses, lightships, beacons, and buoys :

Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

Certain powers
of Governors
to vest in
Governor-
General.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

Chap. III.
The Judicature.

CHAPTER III.

THE JUDICATURE.

Judicial power
and Courts.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

Judges'
appointment,
tenure, and
remuneration.

72. The Justices of the High Court and of the other courts created by the Parliament—

(i.) Shall be appointed by the Governor-General in Council :

(ii.) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity :

(iii.) Shall receive such remuneration as the Parliament may fix : but the remuneration shall not be diminished during their continuance in office :

Appellate
jurisdiction of
High Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

(i.) Of any Justice or Justices exercising the original jurisdiction of the High Court :

(ii.) Of any other federal court, or court exercising federal jurisdiction ; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council :

(iii.) Of the Inter-State Commission, but as to questions of law only : and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

74. Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

A.D. 1900

Conditions of appeal.

74. No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this Constitution or of the Constitution of a State, unless the public interests of some part of Her Majesty's Dominions, other than the Commonwealth or a State, are involved.

Appeals to Queen in Council.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of Her Royal Prerogative, to grant special leave of appeal from the High Court to Her Majesty in Council. But the Parliament may in the laws limiting the matters in which such leave may be asked.

75. In all matters—

Original jurisdiction of High Court.

- (i.) Arising under any treaty ;
- (ii.) Affecting consuls or other representatives of other countries ;
- (iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party -
- (iv.) Between States, or between residents of different States, or between a State and a resident of another State :
- (v.) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth :

the High Court shall have original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

Additional original jurisdiction.

- (i.) Arising under this Constitution, or involving its interpretation :
- (ii.) Arising under any laws made by the Parliament :
- (iii.) Of Admiralty and maritime jurisdiction :
- (iv.) Relating to the same subject-matter claimed under the laws of different States.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

Power to define jurisdiction.

- (i.) Defining the jurisdiction of any federal court other than the High Court.
- (ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States :
- (iii.) Investing any court of a State with federal jurisdiction.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Proceedings against Commonwealth or State.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

Number of judges.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

Trial by jury.

CHAPTER IV. FINANCE AND TRADE.

Chap. IV.
Finance and Trade.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Consolidated Revenue Fund.

A.D. 1900.

Expenditure
charged
thereon.Money to be
appropriated
by law.Transfer of
officers.Transfer of
property of
State.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

85. When any department of the public service of a State is transferred to the Commonwealth—

- (i.) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary:
- (ii.) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth:
- (iii.) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:
- (iv.) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise, not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

A.D. 1900.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Uniform duties of customs.

89. Until the imposition of uniform duties of customs—

Payment to States before uniform duties.

(i.) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth :

(ii.) The Commonwealth shall debit to each State—

(a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth ;

(b) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth :

(iii.) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

Exclusive power over customs, excise, and bounties.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Exceptions as to bounties.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Trade within the Commonwealth to be free.

But notwithstanding anything in this constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

Payment to States for five years after uniform tariffs.

(i.) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State :

(ii.) Subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

A.D. 1900.

Distribution of
surplus.Customs duties
of Western
Australia.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

Financial
assistance to
States.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Audit.

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government, or an officer of the Colony is mentioned.

Trade and com-
merce includes
navigation and
State railways.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Commonwealth
not to give
preference.

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Nor abridge
right to use
water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State
Commission.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament
may forbid
preferences
by State.

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

103. The members of the Inter-State Commission—

A.D. 1

(i.) Shall be appointed by the Governor-General in Council:

Commissioners' appointment, tenure, and remuneration.

(ii.) Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

(iii.) Shall receive such remuneration as the Parliament may fix, but such remuneration shall not be diminished during their continuance in office.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Saving of certain rates.

105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

Taking over public debts of States.

CHAPTER V.

Chap. V.
The States.

THE STATES.

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Saving of Constitutions.

107. Every power of the Parliament of a Colony which has become or becomes a State shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Saving of Power of State Parliaments.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

Saving of State laws.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Inconsistency of laws.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

Provisions referring to Governor.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may surrender territory.

A.D. 1900.

States may levy
charges for in-
spection laws.

112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State ; but the net produce of all charges so levied shall be for the use of the Commonwealth ; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Intoxicating
liquids.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale or storage shall be subject to the laws of the State as if such liquids had been produced in the State.

States may not
raise forces.
Taxation of
property of
Commonwealth
or State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to
coin money.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth
not to legislate
in respect of
religion.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Rights of
residents in
States.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Recognition of
laws, &c., of
States.

118. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public Acts and records, and the judicial proceedings of every State.

Protection of
States from
invasion and
violence.

119. The Commonwealth shall protect every State against invasion, and on the application of the Executive Government of the State, against domestic violence.

Custody of
offenders
against laws of
the Common-
wealth.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

Chap. VI.
New States.

CHAPTER VI.

NEW STATES.

New States may
be admitted or
established.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

Government of
territories.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Alteration of
limits of States.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the

limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

A.D. 1900.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

Formation of new States.

CHAPTER VII.

Chap. VII.
Miscellaneous.

MISCELLANEOUS.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Seat of Government.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

126. The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

Power to Her Majesty to authorise Governor-General to appoint deputies.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

Aborigines not to be counted in reckoning population.

CHAPTER VIII.

Chap. VIII.
Alteration of Constitution.

ALTERATION OF THE CONSTITUTION.

128. This Constitution shall not be altered except in the following manner:—

Mode of altering the Constitution.

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House objects or fails to pass it or passes it with any amendment to which the first mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to

A.D. 1900. — by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manners affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

SCHEDULE.

OATH.

I, *A. B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION.

I, *A. B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

AMENDMENTS IN COMMITTEE.*Notice given 21st May.*

In Committee on Commonwealth of Australia (Constitution) Bill.

MR. SECRETARY CHAMBERLAIN—

Preamble, page 1, line 5, after "Ireland" insert "and under the Constitution hereby established."

Clause 5, page 2, leave out lines 14 to 18, both inclusive.

Clause 6, page 2, line 20, leave out from "Act" to end of line 23.

Clause 9, page 3, line 5, leave out "subject to the foregoing provisions."

Clause 9, page 3, line 6, leave out "set forth in the Schedule to this Act" and insert "follows."

Page 4, line 1, leave out "Schedule."

Page 4, after line 16, insert "the Schedule."

Schedule, page 16, line 28, after "conclusive" insert "unless the Queen grants special leave to appeal in accordance with section seventy-four."

Schedule, page 16, line 34, leave out "74."

Schedule, page 16, after line 36, insert

74. No question howsoever arising as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States or as to the limits *inter se* of the Constitutional powers of any two or more States shall be capable of final decision except by the High Court, and no appeal shall be permitted to the Queen in Council from any decision of the High Court on any such question unless by the consent of the Executive Government or Governments concerned, to be signified in writing by the Governor General in the case of the Commonwealth and by the Governor in the case of any State.

Appeal to
Queen in
Council.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked: provided that any proposed laws containing any such limitation shall be reserved by the Governor General for Her Majesty's pleasure.

AMENDMENTS IN COMMITTEE.*Notice given 18th June.*

In Committee on Commonwealth of Australia Constitution Bill.

MR. MACLEAN—

Clause 90, page 19, line 30, after "Exclusive" insert—

"Provided that any proposed laws for the granting of any such bounties shall be reserved by the Governor General for Her Majesty's pleasure."

MR. SECRETARY CHAMBERLAIN—

Schedule, page 16, after line 36, insert—

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question howsoever arising as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

Appeal to
Queen in
Council.

The High Court may so certify, if satisfied, that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor General for Her Majesty's pleasure.

On consideration of Commonwealth of Australia Constitution Bill,
as amended.

MR. SECRETARY CHAMBERLAIN—

Clause 2, page 1, lines 16 and 17, leave out "and of the Constitution set forth in the Schedule to this Act."

CORRESPONDENCE WITH DELEGATES AND GOVERNORS PRIOR TO INTRODUCTION OF BILL.

MEMORANDUM OF THE AUSTRALIAN DELEGATES.

As a preliminary to a further interview with the Right Honourable the Secretary of State for the Colonies, the Delegates appointed in pursuance of his invitation and under resolutions of the Conference of Premiers (copy appended, marked A) held in Sydney in January last, deem it well to put in writing some of the reasons which, in their opinion, justify them in strongly urging that the "Commonwealth of Australia Constitution Bill" may be introduced and passed into law in the form in which it was affirmed last year by large majorities of the electors of the Colonies of New South Wales, Victoria, Queensland, South Australia, and Tasmania. They are further impelled to this course by the force with which the Law Officers of the Crown have explained the views which, as they believe, render it desirable that some alterations should be made. The Delegates are also encouraged in this fuller expression of their views by the great kindness with which their representations have been invited and received.

While it is open to them to defend by argument the provisions in which it seems to be contemplated to propose alterations, the Delegates are necessarily precluded by the vote of the Australian majority from even appearing to treat with acquiescence the suggestion that any amendment is necessary. Seeing that they are directly instructed by unanimous resolution of the Premiers of their several Colonies to act together in expressing the earnest objection of the Australian people to any alteration of that which a vote so great and so emphatic has ratified, they are bound at the outset to make it an urgent though respectful request to the Secretary of State that the measure as a whole may be submitted to Parliament in the form in which it was transmitted by the five Legislatures immediately concerned, covered by loyal addresses from each of them praying that Her Majesty might be pleased to cause it to be so submitted. They conceive that the only complete assent which can be given to the addresses mentioned is to leave the text of the Bill intact both at and after its introduction. It is the Bill as it now stands, and no other, under which, as the preamble truthfully recites, the people of five loyal Colonies have agreed to unite. That recital would not be justified if something or anything were either introduced or passed to which those Colonies have not agreed. It is that agreement of the people which is the root of the tree of union, and anything which strikes at the root endangers the whole tree. The Delegates therefore submit that the federating Colonies are morally entitled to have the whole Bill laid before Parliament in the very form in which it stood when the votes of the people, affirming it, constituted it the Australian agreement.

The Delegates have been asked whether, assuming that Imperial alterations are nevertheless to be embodied in this Australian agreement before its presentation to Parliament, it is in their opinion preferable that such changes should find place in the portion of the Bill colloquially called the "covering clauses" or in the portion proposed to be called "the Schedule." If their answer were to be read by those whom they represent as in any way an acquiescence in amendments, it is obvious that they would have no authority from Australia to answer such a question. But knowing that the question is not for a moment intended to produce any such impression, they would reply that they recognise that an alteration may, so far as its sense is concerned, be just as well placed in one part of the measure as another, inasmuch as the covering clauses and the Schedule must necessarily be read together. No doubt it would—in appearance—be the less objectionable method to place such alterations in the covering clauses. The result, however, of leaving the Schedule intact, while altering the covering clauses, would be the same, as the meaning and effect of the instrument would still be changed, and the substance of the objection would remain. But the question appears to the Delegates to be significant. If there is hesitation to place alterations in the Schedule rather than in another part of that whole which is the Agreement recited at the very outset, is it not because the change of meaning involved appears less striking in the one part of the instrument than in the other? Surely the question of alteration ought not to depend on such a consideration when the result in each case is identical. The Delegates submit with equal confidence and respect that it is quite clear on examination how vitally the provisions of the Schedule may be, and are likely to be, altered by amendments placed in the "covering clauses": and therefore that the agreement is none the less altered although the place chosen for the alteration shews the greatest disposition to treat the parties to the agreement with all courtesy and kindness,—a disposition which it is scarcely necessary to say will be highly appreciated, but which the Queen's subjects in Australia will consider much less satisfactory than the holding sacred here of a compact held sacred there.

Copies of the appended paper (marked B) have been handed to the Delegates to indicate the amendments which are foreshadowed as possibly to be embodied by Her Majesty's Government in the "covering Clauses."

Taking first, for reasons of convenience, the proposal to declare the laws of the Commonwealth to be "Colonial Laws" within the meaning of the Colonial Laws Validity Act of 1865 (28 & 29 Vict. c. 63), the Delegates may be permitted to say that they agree in the opinion that a declaratory amendment of this kind relating to an Imperial Act would be looked for rather in the covering clauses than in the Schedule. But they are asked further whether it is in their view to be preferred that this declaration should be made by separate enactment or that it should, as indicated by the annexure, appear in the Bill? Guarding themselves as before against possible misapprehension elsewhere, they would reply, without admitting the necessity of any amendment, that a separate enactment appears to be a better vehicle for such a declaration than the measure itself. They cannot, however, refrain from expressing the view that the meaning of the Bill is clear without any such legislative explanation. The doubt expressed by the law advisers of the Crown arises, as they have explained, from the presence in Clause VI. of the words "Colony shall mean any Colony or Province." It is submitted that this definition is framed simply for the purpose of clearly including South Australia in the Bill, and can in no wise exclude the definition of "Colony" in the Colonial Laws Validity Act from applying to the Commonwealth in relation to its laws. The definition in the Commonwealth Bill arises from the fact that South Australia has from time to time been variously designated in legislation as a Colony and as a Province. For instance, in the Imperial Statutes 4 & 5 Wm. IV. c. 95, and 1 & 2 Vict. c. 60, the designation is "Province," in 5 & 6 Vict. c. 61 "Colony" and "Province" are both used for the same purpose. In 4 & 5 Vict. c. 13, in 13 & 14 Vict. c. 59,

and in all Imperial Acts relating to South Australia since the passage by the Local Legislature of the Constitution Act (18 & 19 Vict. No. 2) the term "Colony" is used. But in the Act last mentioned and in all other local legislation since its passage, South Australia has uniformly been referred to as a "Province." Apart from legislation, the Letters Patent, Commissions and Instructions, issued in connection with the offices of Governor, Lieutenant-Governor, and Administrator of the Government for South Australia, have all employed the word "Colony" alone to designate that possession, while the Regulations and other official documents under or in consequence of Local Acts have as regularly referred to South Australia as a "Province." It was merely for the purpose of avoiding the constant repetition of the distinction between the words "Colony," as applied to the other states, and "Province," as applied to South Australia, that the definition in question was placed in the Bill. Inasmuch as Imperial Legislation has so generally referred to South Australia as a Colony, it may be that excessive caution has been used by the draughtsmen in this instance. If after this explanation any doubt remains, the Delegates are of opinion that the real point of objection is in the definition itself as introducing that doubt, and if the definition is unnecessary it would not seem to be convenient to counteract any doubt by amendment elsewhere in the Bill. The Commonwealth appears to the Delegates to be clearly a "Colony," and the Federal Parliament to be a "Legislature" within the meaning of the Colonial Laws Validity Act, and they cannot think that the larger meaning given to the word "Colony" in Clause VI. to save words can be held to take away the protection of the Act of 1865 from any law passed by the Federal Parliament. But the Interpretation Act of 1889 (52 & 53 Vict. cap. 63) might itself be cited in support of the same contention. That Act prescribes that, "unless the contrary intention appears, the expression 'Colony' in any Act passed since the 1st January, 1890, is to mean any part of Her Majesty's Dominions, exclusive of the British Islands and of British India." The Interpretation Act goes on to require that where parts of such Dominions are under both a central and a local legislature, all parts under the Central Legislature shall, for the purposes of the definition, be deemed to be one Colony. It might be argued that this definition secures the application of the Validity Act to Colonial Statutes passed since the end of 1889, and if this be so it would be strange if the occurrence in Clause VI. of the few words quoted were held to deprive the laws of the Parliament of the Commonwealth of Australia of the same protection. It may further be observed that the Constitution of Canada contains no words similar to those proposed to be here inserted, even though that Constitution was enacted prior to 1889; yet it will not be denied that the Colonial Laws Validity Act applies to Dominion Statutes. What then is there which excludes its application to the Statutes of the Commonwealth?

The Delegates turn now to the suggested amendment of Clause V. by the omission of the part of that Clause which prescribes that "laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth." It will be observed that this provision is much more restricted than that made by Section 20 of the Federal Council Act of 1885. Under the present measure the provision is made to apply only to cases in which a British ship begins and concludes her voyage within the limits of the Commonwealth. But Section 20 of the Federal Council Act applied to every British ship which commenced her voyage in any one of the Colonies concerned, and also to every British ship which concluded her voyage in any one of them. In the former case the Federal Council Law would apply to a British ship on the whole of her voyage from Australia to a port beyond the Commonwealth: in the latter case to a British ship on the whole of her voyage from any point beyond the Commonwealth to Australia. In the present measure, so wide an application is not for a moment desired to be given to any law of the Commonwealth; yet it is now sought to further

restrict in the hands of a much more competent legislature a power which 15 years ago the Imperial Parliament did not consider too wide for a much inferior body : a body neither elective nor bi-cameral, and lacking both a responsible executive and a Treasury. It has been further suggested that the matter is sufficiently provided for by the Merchant Shipping Act of 1894. If this view is correct, then the phrase objected to is at the worst a redundancy, and is therefore harmless. The Merchant Shipping Act of 1894, practically repeating the provisions in this behalf of Section 4 of the Merchant Shipping Act of 1869, gives in its 736 Section power to the Legislature of a British Possession to make laws regulating its coasting trade under conditions which need not here be set out. It is also true that the term "British Possession," whether as defined in the Act of 1869 or in the Interpretation Act of 1889, which preceded the present Merchant Shipping Act, would include such a Possession as the Commonwealth of Australia, which under the Interpretation Act would be deemed to be one British Possession including all parts under the Central Legislature. The expression "coasting trade" is not defined in any of the Acts cited : it may be taken to include the trade of vessels plying merely between the ports of a Possession within territorial limits. But the provision in the Commonwealth Bill, to which exception has been taken, would apply to such ships, on a voyage solely between two ports of the Commonwealth, even if they drifted or were blown outside the three-mile territorial limit : the beneficial effect therefore would be, that a vessel on such a voyage would not be exposed to the anomaly of being subject to one set of laws at 2½ miles from the coast, and to another set of laws at 3½ miles from the coast. That this should be prevented is surely not too much to ask. Moreover, the provision in the Bill removes a further anomaly by protecting a vessel which passes from the territorial waters of one Colony into those of another from being subjected to a change of laws in that very operation, and by applying to her the uniform laws of the Commonwealth during the whole of her passage between Commonwealth ports. While, then, the power is less than that conceded to the Federal Council, and never abused, it is larger than that conceded by the Merchant Shipping Act, but larger only for the most beneficial purposes. The reasonableness of the right claimed appears the more clearly when it is considered that one of the most useful purposes of the Constitution is the facilitation of trade between the several Colonies to an extent not hitherto possible, with a clear tendency towards obliterating in respect of commerce those arbitrary lines between Colony and Colony, which in the past have been productive of so much friction and hindrance.

There remain for explanation the enactments relating to appeals to the Judicial Committee of the Privy Council. The most important of these is to be found in the first part of Clause 74. It has been suggested that it ought to be nullified, first by striking out from the second covering Clause the words "this Act shall bind the Crown," and adding a consequent amendment in that Clause, and next by appending to covering Clause V. the following words "nothing in this act or in the Schedule set forth as the Schedule to this Act shall affect any prerogative of the Crown to grant special leave to appeal to Her Majesty in Council." The meaning of Clause 74 would be entirely changed if the alteration suggested were made, and the effect of the reading together of the covering Clauses and the Schedule would be that the Schedule itself would be something materially different from that which the people of the five Colonies have made their Agreement. Such a result would, in the view of the great majority of the Australian people, be nothing short of a calamity to Australian self-government.

Turning to Clause 74 itself, the discussion of which is forced on them by the suggestion, the Delegates would point out that the effect of the Clause is by no means so far-reaching as has been supposed in many quarters. The contention for the finality of the judgments of their High Court is based by Australians on the argument that if they are fit, as is conceded, to make a Constitution for themselves, they are fit also to say what that Constitution

means, and for that purpose they should be allowed to rely on the decisions of their High Court.

Judicial knowledge of local conditions, invaluable always, is indispensable in the interpretation of Constitutions.

Her Majesty's Judges, Australian as well as British, will ever be men of conspicuous ability and integrity, whose impartiality will not be prejudiced by their domicile:—are not English Appeals heard in the House of Lords?

Few parts of the Bill were more keenly discussed at the several sessions of the Convention than those which have been termed, for brevity, the Privy Council Clauses. A mere reference to the index of the Debates will show how numerous and varied were the proposals discussed in the Convention. These discussions were conducted with absolute publicity, and before the provisions finally took their present shape there had been two lengthy adjournments of the Convention, during which the press and the public had closely debated the matter, and during which also the several Legislatures of the Federating Colonies, with the exception of Queensland (which had not been represented at the Convention), but which affirmed the Bill as framed, had made their varying suggestions for the amendment of this as well as the other parts of the Bill, including the covering Clauses. As the result of the discussions during the earlier sessions of the Convention and during its adjournments, and of strongly sustained debates in the final session at Melbourne, Clause 74 took the following, which is its present form. "No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this Constitution or of the Constitution of a State, unless the public interests of some part of Her Majesty's Dominions, other than the Commonwealth or a State, are involved. Except as provided in this Section, this Constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of her Royal prerogative, to grant special leave to appeal from the High Court to Her Majesty in Council. But the Parliament may make laws limiting matters in which such leave may be asked." The concluding sentence of the Clause, it is conceived, confers on the Commonwealth a right to do that which each State at present has power to do, subject to reservation of the Bill as affecting the prerogative, in accordance with the ordinary vice-regal Instructions. See Instructions to Australian Governors, dated July, 1892, Clause VIII., paragraph 7, under which the Governor is to reserve for the signification of the Royal pleasure "any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our subjects not residing in the Colony, or the trade and shipping of the United Kingdom and its dependencies may be prejudiced." The framers of the Instructions clearly appear to have considered that the Colonies had full rights of legislation in such matters as paragraph 7, just quoted, sets forth, subject only to reservation for the royal pleasure; and then only when previous instructions upon the particular Bill had not been obtained through one of the Principal Secretaries of State, or when the Bill did not contain a Clause suspending its operation until the signification of the Royal pleasure. The last sentence of the Clause, therefore, seems merely to confer on the Federation that legislative power which has long been possessed by each of the constituent States.

The second part of Clause 74, beginning with the words "except as provided in this Section," makes no mention of appeals to the Queen in Council from the Courts of the States or Colonies, and it is submitted that the appeal which now lies to Her Majesty in Council from those Courts is not taken away by the Bill as it stands, since the proposed enactment deals only with appeals to Her Majesty in Council from the High Court, for which appeals it was necessary for the Constitution to make provision. The immediately preceding Clause, 73, merely gives jurisdiction to the High Court with respect to appeals. It does not abolish appeals to the Queen in Council with respect to State Courts, and as there is no enactment elsewhere that appeals from them are to cease, the prerogative remains, and the appellant may take

his case either to the High Court or to the Privy Council. But when, and only when, he goes to the High Court in one of the limited class of cases set forth in the first part of Clause 74, he must abide by the decision of that Court. Further, it will be remembered that the public interests of any part of Her Majesty's Dominions other than the Commonwealth or a State of the Commonwealth cannot in any case remain the subject of a final decision by the High Court, even where the interpretation of this measure or of a State Constitution is involved. The Delegates have thus summarised what appears to them to be the effect of the provisions in the Schedule, and consideration is asked whether it is worth while to incur the risk of serious dissatisfaction in Australia for the sake of preserving the small degree of prerogative affected.

The Clauses are framed with relation to things as they exist, and even if the Sovereign Power of Parliament is ever to be exercised over the heads of the Australian people, we submit most earnestly that the present is pre-eminently a measure in respect of which that power should not be exercised.

The Delegates would here refer to the action of the Imperial Government in respect of the Federal Council Bill in 1885. In his circular despatch informing the Governors of the several Colonies of the passage of that measure, the then Secretary of State for the Colonies, having remarked that it had passed the House of Lords and was awaiting its second reading in the House of Commons when fresh advisers of Her Majesty had assumed office, said that "it would have been inexpedient to make any avoidable alterations in the Draft" prepared by the Convention at Sydney, "unless such alterations could be previously considered by the same or a similar Convention." Now that the popular approval has been invoked and given, to submit proposed amendments to the "same" Convention is impossible, because its legal existence has ended, and to submit them to a "similar Convention" would be insufficient unless the Convention were popularly elected and its decisions popularly ratified. But the submission of amendments to a third referendum at this late stage would be regarded by the public in Australia as harassing, even if its vote were called for without a previous discussion of the amendments by another elected Convention. Apart from the expense of such proceeding, the delay would be most vexatious and unpopular, and beyond and above such considerations, the distrust of their previous decisions so manifested would be resented by the electors, whose agreement has been arrived at only after many years of agitation and controversy. The Delegates are unable to see that any fresh tangible facts have intervened since the referendum of 1899 to justify the expectation that the well-considered vote of that year would be reversed in respect of the matters in question. They feel that there are strong grounds for anticipating that the Governments of the several Colonies would emphatically protest against the expense, the delay, the turmoil, and the disturbance of normal conditions which would accompany a third referendum on, perhaps, a single point. But they admit at the same time that the logical result of the attempt to make any alteration of substance is to appeal a third time to a constituency containing nineteen-twentieths of the population of the Australian continent, and spread over more than two millions of square miles, that is to say, over an area almost two-thirds as large as the Continent of Europe. All this at an enormous expense, and merely for the purpose of ascertaining whether Australians who have twice decided that the makers of laws are in their opinion fit to interpret them, are prepared to reverse that decision in derogation of their own competency. It is not to be supposed that such a burden could be laid upon the people without awaking among them a feeling that they are seriously aggrieved. If, on the other hand, alterations were forced on them without their consent, something which is not their agreement, and for which they have never asked, would thus be forced on them, and the sense of injustice would be equally strong. It is respectfully urged that the granting of this Constitution without amendment is the only way out of such a dilemma.

When the Federal Council Bill was before the House of Commons in August, 1885, a right honourable gentleman, respected by all parties as a high constitutional authority, directed attention to several points in relation to that Bill which discover marked differences between its history and character and those of the present measure. He remarked that there was no evidence to show that the Bill then presented had really been satisfactorily discussed and considered in the Colonies themselves. He said that it emanated, in the first instance, from a small coterie of Prime Ministers. He declared that the Bill would have come before the House with greater authority if they had reason to believe that proper pains had been bestowed upon it, and that proper efforts had been made to obtain full publicity and discussion for it in the Australian Colonies themselves. He condemned it as a very scanty, fragmentary, and imperfect sketch of a Federal Constitution. Nevertheless, he was content that the House should pass the Bill in the form in which the Colonies had asked it to do so, and as a matter of favour to them, but the responsibility of its formation would rest substantially more with the Colonies than with Parliament. The action of both Houses confirmed this view.

In comparison, how irresistible is the present one !

Emanating in the first instance from the Australian electors, through specially chosen representatives, moulded by these with infinite pains, framed in full publicity, and then discussed for nearly 12 months in the Debates of the Convention, the columns of the Press, and the meetings of the people, the measure now to be submitted to the Imperial Parliament differs in every one of these respects, and radically differs, from the Federal Council Bill. For the "scanty, fragmentary, and imperfect sketch" of Federal Union presented in 1885 there has now been substituted a Constitution which may without presumption be characterised as complete in all its parts, and, after most anxious consideration of previous Federal Charters, approved and accepted by the Parliaments and the people of the federating Colonies. If British statesmen were content, as they showed that they were content, to pass the former measure in the shape given to it by Executive Governments alone, how much stronger is now the appeal of Australia to the sense of justice and of generosity of Government and Parliament when they are asked to confirm the Constitution of her Commonwealth framed by the chosen of her people and solemnly agreed to by that people themselves.

In the speech from which extracts have already been taken, it was justly said that the responsibility for the Federal Council would rest with the Colonies themselves. Five Australian Colonies, by an aggregate majority of nearly three to one of their people, have affirmed with the utmost emphasis that they are prepared to take the responsibility of their own Constitution. They are of British stock ; they are fellow countrymen of the people of this Kingdom ; they have no more confidence in themselves and in their power to work out their own destiny than is right and just in men of their blood ; that they have no less, events have proved. Not arrogantly, but with the pride of their race, they ask to be accounted fit for those responsibilities which men of that race have never shirked and seldom abused. If they are given what they now ask, they will know that they have received a trust which their fellow subjects in this Kingdom will find them able to fulfil. In placing that trust in their hands the mother country will bind her Colonies to her with something stronger than words upon paper : with the high confidence which justice engenders, and the affection which gratitude evokes and perpetuates.

EDMUND BARTON.
ALFRED DEAKIN.
JAMES R. DICKSON.
C. C. KINGSTON.
P. O. FYSH.

London,
23rd March, 1900.

"A."

RESOLUTION PASSED AT THE CONFERENCE OF THE PREMIERS OF THE AUSTRALASIAN COLONIES ON THE 25TH JANUARY, 1900.

"THAT in compliance with the request contained in the despatch received from the Secretary of State for the Colonies, that Delegates from the Australian Colonies should be sent to England to explain and give assistance when the Australian Commonwealth Bill comes before the Imperial Parliament, this Conference is of opinion that each Colony should appoint a Delegate, and that such Delegates when appointed should represent all the Federating Colonies in unitedly urging the passing of the Bill through the Imperial Parliament without amendment, and in explaining any legal or constitutional questions that may arise."

"B."

IV.

ANNO SEXAGESIMO ET SEXAGESIMO PRIMO.

VICTORIÆ REGINÆ.

A.D. 1898.

DRAFT OF A BILL.

To Constitute the Commonwealth of Australia.

WHEREAS the people of [*here name the Colonies which have adopted the Constitution*], humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:—

Preamble.

I. This Act may be cited as "*The Commonwealth of Australia Constitution Act*." Short title.

II. ~~This Act shall bind the Crown, and its~~ The provisions of this Act and of the Constitution set forth in the Schedule to this Act referring to the Queen shall extend to Her Majesty's Heirs and Successors in the Sovereignty of the United Kingdom. Act to bind Crown, and extend to the Queen's Successors.

III. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by Proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of [*here name the Colonies which have adopted the Constitution*] shall be united in a Federal Commonwealth under the name of "The Commonwealth of Australia." But the Queen may, at any time after the Proclamation, appoint a Governor-General for the Commonwealth. Proclamation of Commonwealth.

IV. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several Colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act. Commencement of Act.

Operation of the
Constitution
and laws.

V. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the Courts, Judges, and people of every State, and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth, shall be *Colonial Laws within the meaning of the Colonial Laws Validity Act, 1865, in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.*

Nothing in this Act or in the Schedule set forth as the Schedule to this Act shall affect any prerogative of the Crown to grant special leave to appeal to Her Majesty in Council.

Definition.

VI. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"Colony" shall mean any Colony or Province.

"The States" shall mean such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such Colonies or Territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called a "State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

Repeal of
Federal Council
Act.

VII. "*The Federal Council of Australasia Act, 1885,*" is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or to any Colony not being a State by the Parliament thereof.

Application of
Colonial
Boundaries Act.

VIII. After the passing of this Act the "*Colonial Boundaries Act, 1895,*" shall not apply to any Colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing Colony for the purposes of that Act.

Constitution
and its
Provisions.

IX. The Constitution of the Commonwealth shall be as follows:—*set forth in the Schedule to this Act—*

SCHEDULE.

THE CONSTITUTION.

This Constitution is divided as follows:—

- CHAPTER I.—THE PARLIAMENT:
 - PART I.—General:
 - PART II.—The Senate:
 - PART III.—The House of Representatives:
 - PART IV.—Both Houses of the Parliament:
 - PART V.—Powers of the Parliament:
- CHAPTER II.—THE EXECUTIVE GOVERNMENT:
- CHAPTER III.—THE JUDICATURE:
- CHAPTER IV.—FINANCE AND TRADE:
- CHAPTER V.—THE STATES:
- CHAPTER VI.—NEW STATES:
- CHAPTER VII.—MISCELLANEOUS:
- CHAPTER VIII.—ALTERATION OF THE CONSTITUTION.
- THE SCHEDULE.

MEMORANDUM OF THE OBJECTIONS OF HER MAJESTY'S GOVERNMENT TO SOME PROVISIONS OF THE DRAFT COMMONWEALTH BILL.

Her Majesty's Government have had under their careful consideration the question how far it is possible to pass through the Imperial Parliament the Bill which has been submitted by the five Colonies of Australia; they desire to acknowledge the assistance they have received from the Memorandum prepared by the Australian Delegates, and they appreciate the friendly spirit in which the questions raised have been discussed.

Her Majesty's Government are most anxious that the Bill should be passed, and speedily passed, in a form which shall give to the Australian Colonies the Federation which they so earnestly desire; but, at the same time, it is their bounden duty to protect the interests of the United Kingdom and of other parts of the Empire which are also committed to their charge.

The points of difference are few in number, and involve a minimum of alteration. Her Majesty's Government observe that the Memorandum of the Delegates abstains from discussing any of the suggested alterations on their merits, and consists almost entirely of an appeal to Her Majesty's Government to accept without alteration the proposed Bill as embodying the wishes of the people of Australia.

Her Majesty's Government feel it their duty to place on record some of the reasons which make it impossible for them to accede to this request, much as they would desire to do so.

The Memorandum of the Delegates requests that the whole of the draft Bill as received from the Colonies may be submitted to Parliament and passed into law. The distinction which was drawn in the discussions of the Federal Convention between the "covering clauses" and the "Constitution" is no longer recognized, and it is contended that the whole Bill, covering clauses and Constitution alike, ought to be passed by the Imperial Parliament without alteration, on the ground that it embodies the Agreement at which the people of the Colonies have arrived.

While there is every desire to give effect, as far as is possible, to the wishes of the people of Australia, it must be pointed out that the enabling Acts under which the Referendum was taken formally referred to the "Constitution" only, and the Addresses from the Parliaments pray that the "Constitution" may be submitted to the Imperial Parliament and passed into law.

The distinction between the covering clauses and the Constitution was clearly pointed out by Mr. Barton on several occasions in the course of the debates. Speaking at Adelaide at the sitting of the 14th April, 1897, on Clause 5, with reference to the provision as to the operation of the laws of the Commonwealth on British ships: "This appears to be a concession to Australia, and the best thing to do is to let the Imperial authorities deal with it." In the course of the debates at the Sydney meeting of the Convention in 1890, Mr. Barton again expressed himself more fully to the same effect. "We do not expect," he said, "that the Imperial Legislature will amend the provisions which are in the Constitution itself, although they are an endeavour to extend our autonomy; but these covering clauses are suggestions to the Imperial Legislature, and it would be absurd to expect that, as regards these clauses, the Imperial Legislature will not make such amendments as they please."

It is clear therefore that the covering clauses were not regarded as a part of the Agreement between the Australian Colonies as to the Constitution under which they are prepared to unite, but rather as suggestions as to the terms of the Agreement between the Colonies and the Mother Country.

An examination of the covering clauses shows that they deal with matters in which Australia, being a part only of Her Majesty's dominions, could not

Adelaide
Debates, p. 628.
See also p. 627,
ibid.
Sydney Debates,
p. 249

properly claim to have a final voice. They affect in important respects the prerogative of the Crown and the powers and privileges of the Imperial Parliament and of the Legislatures of other parts of the Empire. In regard to these matters, the Imperial Parliament and Government are in the position of trustees for the whole of Her Majesty's dominions, and the responsibility attaching to that trust makes it incumbent on them to examine with the utmost care any proposal which would in any degree affect their power to discharge the trust efficiently. They cannot relieve themselves of responsibility to those for whom they are trustees by divesting themselves of their powers by delegation. In putting the provisions of the draft Bill which affect these powers in the form of suggestions, and not as an integral and essential part of the Federal Constitution, the Statesmen who framed that instrument and the Parliaments and peoples who have indorsed it have fully recognised this principle.

The alterations suggested, as shown in the copy of the draft Bill handed to the Delegates, were limited to those which appeared essential for the safeguarding of the powers intrusted to the Imperial Parliament and Government for the protection of those common interests and the discharge of those common duties which form the peculiar sphere of the central authority of the Empire.

Taking them in the order in which they are discussed in the Memorandum of the Delegates, the first is the proposal to declare the Laws of the Commonwealth to be "Colonial Laws" within the meaning of "The Colonial Laws Validity Act, 1865." The Memorandum maintains that the doubts entertained by the Law Officers as to the application of that Statute to the enactments of the Commonwealth Parliament are unfounded, and that any amendment is therefore unnecessary: but that, if it is considered important to remove doubts on the subject, a separate enactment would be a better vehicle for such a declaration than the measure itself. It is to be observed in this connection that the Honourable R. E. O'Connor, one of the members of the drafting Committee, at the meeting of the 9th September, 1897, stated that the Colonial Laws Validity Act would have no application to the Laws of the Commonwealth, and it is important, in the interests of the Commonwealth as well as of the rest of the Empire, that any possibility of misapprehension as to the validity of Commonwealth Laws or as to the supremacy of Imperial legislation should be removed. That there is room for such misapprehension is clear, not only from the language of clause 6 of the covering clauses, but also from Article 51, paragraph 38, of the Constitution, which confers on the Commonwealth Parliament "the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom, or by the Federal Council of Australasia." Sub-section 29 of the same clause of the Constitution, moreover, empowers the Commonwealth Parliament to legislate in regard to "external affairs," and, consequently, under these provisions it might be claimed that the Parliament of the Commonwealth had power to pass legislation inconsistent with Imperial legislation dealing with such subjects as those dealt with by the Foreign Enlistment Act. The responsibility to foreign Powers for such legislation would rest, not on Australia, but on the Government of the United Kingdom, as representing the whole Empire; and in the absence of any definition or limitation of the privilege claimed by these provisions for the Commonwealth Parliament, Her Majesty's Government would fail in their duty if they left any room for doubt as to the paramount authority of Imperial legislation.

The next amendment dealt with in the Memorandum is the proposed omission from clause 5 of the words which prescribe that "The laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth." The Delegates rely upon the fact that an even wider application in the case of British ships was given to the Laws of the

Federal Council by section 20 of the Federal Council Act of 1885, and they urge that the Laws of the Commonwealth Parliament, a more representative and responsible body than the Federal Council, should not be denied the more limited application claimed in the clause.

The words of section 20 of the Federal Council Act were very wide, perhaps unduly so, and if the powers thereby conferred had been freely exercised grave difficulties would certainly have arisen.

What is desired is the power to the Commonwealth to control the coasting trade: this power they will have under section 736 of "The Merchant Shipping Act. 1894," which is not confined in its operation to the coasting trade while in territorial waters. Moreover, the words "first port of clearance" and "port of destination" in the clause in question are not free from ambiguity, and embarrassing questions might be raised as to the law applicable to a ship clearing from one Australian port for another after coming to Australia from a port in some other part of Her Majesty's dominions.

The analogy of the Federal Council of Australasia is incomplete, inasmuch as it was contemplated that all British possessions in Australasia might be represented in the Federal Council, whereas the operation of this Bill is at present confined to five Australian Colonies.

It must not be forgotten that the Imperial Parliament was expressly invited by Mr. Barton when speaking in the Convention to deal as they thought proper with this provision of the Bill.

The Memorandum next deals with the amendment relating to appeals to the Privy Council.

Before proceeding to consider the reasons urged by the Delegates against the proposed amendment, it is desirable to set out the grounds upon which Her Majesty's Government object to the provisions of Article 74, to which the suggested amendment applies. The Article is as follows:—

"No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this Constitution, or of the Constitution of a State, unless the public interests of some part of Her Majesty's dominions, other than the Commonwealth or a State, are involved.

"Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of her Royal prerogative, to grant special leave of appeal from the High Court to Her Majesty in Council. But the Parliament may make laws limiting the matters in which such leave may be asked."

It is impossible to say what construction would be placed on this Article when it comes to be judicially interpreted. There may be large classes of cases just on the borderline with regard to which it cannot be predicted whether they do or do not involve the interpretation of the Constitution.

It may fairly be argued that any question as to the validity of the exercise of legislative powers by the Legislature of the Commonwealth is a matter involving the interpretation of the Constitution. Questions may arise whether legislation under any of the powers mentioned in paragraphs i, ix, x, xix, xx, xxvi, xxvii, xxviii, xxix, xxx, xxxvii, and xxxviii of Article 51 of the Constitution is or is not *ultra vires*, and any such legislation may involve matters affecting foreigners and foreign ships in Australia and in Australian waters and their Treaty rights. Yet as the clause stands there would be no right of appeal from the High Court to the Privy Council in such cases.

The Constitution embodies a request to the Imperial Parliament to delegate to the Parliament of the Commonwealth part of the powers now exercisable only by the Imperial Parliament or by the Crown. Paragraphs xxix, xxx, and xxxviii of Article 51, for instance, purport to transfer to the Commonwealth Parliament powers not included in the powers of an ordinary Colonial Parliament, and it can hardly be contended that the Imperial Parliament should preclude an appeal to an Imperial Court on any question as to the extent to which powers now exercised exclusively by itself or by the Crown have been delegated.

Adelaide
Debates,
pp. 627-628.

Sydney Debates
p. 249.

A grave objection to Article 74 is the absence of any definition of the class of cases in which "the public interests of some part of Her Majesty's dominions other than the Commonwealth or a State."

Does this phrase include the interests of a large class of persons of Her Majesty's dominions—say of investors in Australian securities, or of a body of shareholders in an industrial undertaking formed, say, in the United Kingdom, to carry on some great commercial enterprise in Australia—or is it confined to cases in which the interests affected are only those of the government of other parts of Her Majesty's dominions?

If the latter is the true meaning, the proviso would have little or no operation. If the former, no task can be conceived more difficult than that of deciding whether or not the condition of the Article has been satisfied.

The view taken in the Memorandum of the Delegates is that the prerogative of granting leave to appeal to the Privy Council from the Supreme Courts of the several Colonies is unaffected, and that Article 74 only applies to appeals from the High Court of the Commonwealth.

This is very doubtful, and is only one of the many difficult questions of construction which would arise upon this Article. The Article appears to have been framed under the impression that the only appeal from the Supreme Courts of the Colonies was to be to the High Court of the Commonwealth, and its effect upon the right of Her Majesty to grant leave to appeal to the Privy Council from the Judgments of Supreme Courts of the Colonies is problematical.

If, however, the view taken by the Delegates on this point be correct, the result will be that in a Constitutional case a litigant defeated in the Supreme Court of a State might appeal at his option either to the High Court of the Commonwealth or to the Privy Council. The successful party might prefer the later, but would have no choice.

Again, if the Delegates' view as to the construction of the Article is correct in the case of a decision by a Superior Court with which neither litigant is satisfied, there may be cross appeals, one by one party to the High Court, and the other by the other party to the Privy Council. The decisions of both of these Courts may be final, and if they happen to disagree, it is difficult to see what will be the consequence.

Further, under Article 74, it would in many cases be possible for a litigant to present a Petition to the Queen in Council for special leave to appeal, on the ground either that the question at issue did not involve the interpretation of the Constitution, or that public interests were involved, and on this Petition there would be a preliminary argument on either or both of these points.

To pass this Article in its present form would be to introduce confusion and uncertainty in a matter in which it is desirable above all others that there should be clearness and certainty. The difficulty of construing it forms an insuperable obstacle to its adoption by the Imperial Parliament without modification or some overriding clause in the Bill to control its operation.

But there are other and graver objections to the Article. From the proceedings of the Convention, it would appear to have originated to some extent in objections to the present constitution and working of the Judicial Committee of the Privy Council. The administration of justice by that Tribunal has been, on the whole, such as to command the confidence of the Empire.

But apart from this consideration, the time is specially inopportune for any proposal to curtail its jurisdiction. Proposals are under consideration for securing a permanent and effective representation of the great Colonies on the Judicial Committee, and for amalgamating the Judicial Committee with the House of Lords, so as to constitute a Court of Appeal from the whole British Empire. It would be very unfortunate if Australia should choose this moment to take from the Imperial Tribunal the cognizance of the class of cases of greatest importance, and often of greatest difficulty. Article

74 proposes to withdraw from the Queen in Council matters involving the interpretation of the Constitution. It is precisely on questions of this kind that the Queen in Council has been able to render most valuable service to the administration of law in the Colonies, and questions of this kind, which may sometimes involve a good deal of local feeling, are the last that should be withdrawn from a Tribunal of appeal with regard to which there could not be even a suspicion of prepossession.

Questions as to the constitution of the Commonwealth or of a State may be such as to raise a great deal of public excitement as to the definition of the boundaries between the powers of the Commonwealth Parliament and the powers of the State Parliaments. It can hardly be satisfactory to the people of Australia that in such cases, however important and far-reaching in their consequences, the decision of the High Court should be absolutely final. Before long the necessity for altering the Constitution in this respect would be felt, and it is better that the Constitution should be enacted in such a form as to render unnecessary the somewhat elaborate proceedings which would be required to amend it.

But it must be further observed that matters involving the interpretation of the Constitution may raise questions of the utmost gravity, not only between the Commonwealth and the separate States, but also as between the Commonwealth and the States on the one hand, and other parts of Her Majesty's dominions or foreign countries on the other. Among the matters on which the Parliament may make laws for the Government of the Commonwealth is comprised (Article 51, paragraph 10) fisheries in Australian waters beyond territorial limits. The interpretation to be put on the Constitution in this matter may most seriously affect British vessels, and particularly vessels from New Zealand. Grave questions may arise as to what fisheries beyond territorial limits are to be deemed to be Australian fisheries, and as to the class or classes of persons on whom the laws of the Commonwealth as to this matter will be binding. It is hardly reasonable to expect that inhabitants of other parts of the Empire should be finally concluded in such matters by the decision of the Australian Court.

Another head on which the Parliament of the Commonwealth has power to legislate is that of external affairs (Article 51, paragraph 29). As has already been pointed out, a law might be passed by the Parliament of Australia with reference to the subject of foreign enlistment. The consequences of such legislation might involve the Empire in difficulties with foreign Powers. It is not reasonable to withdraw from the Imperial Tribunal the right of deciding whether a measure of this class is or is not invalid as being in contravention of Imperial legislation, or as to its true construction.

The legislation of the Parliament of the Commonwealth may affect British shipping coming from the United Kingdom or British possessions. The Merchant Shipping Act, 1894, makes (sections 735-736) special provision for legislation in a British possession with regard to vessels there registered, and with regard to the coasting trade in British possessions. Having regard to the interests which may be affected by legislation under this head, it appears essential that there should be the possibility of an appeal to the Queen in Council.

The question of the right of appeal must also be looked at from the point of view of the very large class of persons interested in Australian securities, or Australian undertakings, who are domiciled in the United Kingdom. Nothing could be more prejudicial to Australia than to diminish the security felt by capitalists who desire to invest their money there. One element in the security which at present exists is, that there is the possibility of an ultimate appeal to the Queen in Council, and there is very strong feeling against its abolition. Cases affecting the rights of such persons may often involve questions of the interpretation of the Constitution. But, apart from this consideration, the last sentence of Article 74 of the Constitution provides in express terms that the Parliament of the Commonwealth may

make laws limiting the matters in respect of which leave may be asked to appeal. So that it is evident that the possibility of appeal in certain cases left by Article 74 as it now stands may be indefinitely curtailed in the future.

A brief examination of the history of Article 74 may be desirable before proceeding to discuss the arguments of the Delegates against its amendment.

In the draft of the Constitution prepared at the Adelaide meeting of the Federal Convention the Article was as follows :—

“No appeal shall be allowed to the Queen in Council from any Court of any State, or from the High Court or any other Federal Court, except that the Queen may in any matter in which the public interests of the Commonwealth, or of any State, or of any other part of her dominions are concerned, grant leave to appeal to the Queen in Council from the High Court.”

The meaning of this Article was explained in the discussion on the 20th April, 1897, by Mr. Higgins, who was a member of the Judiciary Committee, as follows :—

“I feel a misapprehension has grown up that we are trying to do something new. The object of this clause is simply to stereotype in the Act what has already existed in Canada, where there is a general right of appeal reserved to Her Majesty in Council on a decision of the Privy Council ; but that right of appeal is not allowed unless the cases are of public interest. Therefore the effect of clause 73 is simply to put in plain English what is the law now in Canada.”

Mr. Barton endorsed this explanation, saying : “That is the whole purpose and object of the clause ; my honourable friend has saved me the trouble of explaining it.”

The phrase “public interest” was used by Mr. Higgins as defining the class of cases in which special leave is granted to appeal from a decision of the Supreme Court of Canada. The rules laid down by the Privy Council as regards such appeals are set forth in the case of *Prince v. Gagnon* (8 App., Cas. 103) :—

“Their Lordships are not prepared to advise Her Majesty to exercise her prerogative by admitting an appeal to Her Majesty in Council from the Supreme Court of the Dominion, save when the case is of gravity, involving matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character.”

The language of the Article then under consideration hardly carried out the purpose with which it had been framed, as explained to the Convention by Mr. Higgins and Mr. Barton, namely, that it was only intended to stereotype and fix, in regard to the High Court of Australia, the practice of the Privy Council, as declared by that body itself, in regard to the Supreme Court of the Dominion of Canada ; but their declarations are conclusive, as showing the sense in which the Article was adopted by the Convention at the sitting of the 20th April, 1897.

All that Her Majesty's Government desire upon this point is that effect should be given to the expressed intention of the framers of the clause, that it should embody the practice of the Privy Council upon Canadian appeals. After the Bill had been settled at Adelaide, it was discussed at length by the several Parliaments of the Federating Colonies, and several amendments were proposed in favour of extending the right of appeal as left in the Adelaide draft, but none apparently in favour of further restriction. The question was not discussed at the Sydney meeting, nor until January, 1898, when an effort was made by those members who were in favour of the appeal to obtain the insertion of a provision saving the prerogative. The attempt was defeated by 22 votes against 14. The question was again brought up on the 11th March, when, on the motion of Sir Joseph Abbott, a clause saving the prerogative to grant special leave to appeal was carried by one vote in a House of thirty-nine Members. This was followed by an amendment, moved by Mr. Symon, excepting cases involving the interpretation of

the constitution of the Commonwealth or of a State, which was carried by 21 votes to 17.

The original draft of the Adelaide Session, therefore, which abolished appeals from all lower Australian Courts, and except by special leave from decisions of the High Court in matters involving the public interests of the Commonwealth, &c., was completely departed from, and the question of the appeal was left in the position summarized on page 7 of the Delegates' Memorandum. (Supra. pp. 144-5.

If the provision in the Adelaide draft had carried out the declared intention of those who framed it, and left only the special appeal from the High Court in the cases in which appeals are allowed from the Supreme Court of the Dominion, it would have been entirely satisfactory to Her Majesty's Government, but the exception introduced at the last moment on the motion of Mr. Symon leaves the question in a very unsatisfactory and anomalous position. That exception had not been discussed in the several Parliaments when the measure was before them for detailed consideration, and can hardly be said to have received adequate discussion.

The Delegates urge that "the contention for the finality of the Judgments of their High Court is based by Australians on the argument that if they are fit, as is conceded, to make a Constitution for themselves, they are fit also to say what that Constitution means, and for that purpose they should be allowed to rely on the decisions of their High Court," that "judicial knowledge of local conditions invaluable always is indispensable in the interpretation of Constitutions," and "that Her Majesty's Judges, Australian as well as British, will ever be men of conspicuous ability and integrity, whose impartiality will not be prejudiced by their domicile."

The answer is that in many cases the construction of the Constitution of such a country as Australia cannot be regarded as affecting Australian interests alone.

That cases would come before the Imperial Court of Appeal with the advantage of a full knowledge of local conditions relevant to the case as they would have been explained in the Judgments of the Australian Court, and that while the high standing and ability of Australian Judges is recognised to the fullest degree, it would be of great assistance to them that, in exceptional cases, there should be the possibility of having their decisions on constitutional questions reviewed by a Tribunal, which, even if party feeling ran high on the question in dispute, could not possibly be charged with being under its influence.

In conclusion, it should be remembered that the question must be looked at from a still wider point of view.

The retention of the prerogative to allow an appeal to Her Majesty in Council would accomplish the great desire of Her Majesty's subjects both in England and Australia, that the bonds which now unite them may be strengthened rather than severed, and, by insuring uniform interpretation of the law throughout the Empire, facilitate that unity of action for the common interests which will lead to a real Federation of the Empire.

The object of every one at present should be to draw closer together all parts of the Empire. The existence of the right of appeal, subject to the leave of the Privy Council, has been a link effectively binding together every part of Her Majesty's dominions; the weakening of this tie would seriously lessen the value of even so great and beneficent a result as the Federation of Australia.

If the Bill were passed in its present form, while it would mark a step in advance as far as the Federation of Australia is concerned, it would be a retrograde measure so far as it effects the larger question of Imperial Federation.

March 29, 1900.

MR. CHAMBERLAIN TO THE GOVERNORS OF NEW SOUTH WALES,
VICTORIA, QUEENSLAND, SOUTH AUSTRALIA AND TASMANIA.

(Sent 12 midnight, April 5, 1900.)

TELEGRAM.

¶ The discussion with the delegates has been carried on in a most friendly spirit and with good result. Any desire or intention to interfere in any matter involving interests exclusively Australian is disclaimed by Her Majesty's Government, but they are confident that full weight will be given to their suggestions by your Ministers when urged on behalf of interests of United Kingdom, or as Trustees for the Empire at large.

Her Majesty's Government would have desired amendment as to various questions which have arisen, but are unwilling to risk delaying Federation by pressing their views, and the operation of Clause 74, in restricting the right of appeal to the Privy Council, is now practically the only matter at issue.

Her Majesty's Government object to this clause because (1) the term "public interests" is so vague and indefinite as to leave uncertainty in a matter where precision is of first importance, and increased litigation, due to applications for leave to appeal and the multiplication of arguable points on appeal, will be the result.

(2) A most important link of Empire would be seriously impaired, and the consequences would be far-reaching in allowing divergency to spring up where in the general interests unity and uniformity is most desirable.

(3) It can scarcely be to the interests of Australia that in important questions as to boundaries between powers of Commonwealth and States the final decision should not lie with highest tribunal of Empire, beyond suspicion of local bias or predilection.

(4) Important questions may arise as to operation of Commonwealth Laws on British shipping, or generally as to whether such laws are *ultra vires*, which the Imperial Parliament can scarcely allow to be concluded by decision of Australian High Court.

(5) Commonwealth legislation on such subjects as fisheries may seriously affect the interests of subjects of other parts of the Empire, and in such matters Parliament could not expect them to submit to be deprived of appeal to an Imperial Court.

(6) Banks and other financial and commercial institutions having large interests in Australia entertain very strong feeling against the limitation, and weighty representations have been made on the subject to Her Majesty's Government.

(7) Her Majesty's Government feel that the actual restriction, and the power claimed to make further restriction equivalent to practical abolition of appeal, would be specially inopportune at the moment when they are considering terms of a Bill for enhancing the dignity and promoting the efficiency of the Judicial Committee by practically amalgamating it with the House of Lords, and providing for adequate permanent representation of the great Colonies in a new Court which it is proposed to create. Should Australian appeals be practically withdrawn, the new Court would be deprived of a large part of its value as providing a new sphere for co-operation between Colonies and Mother Country, and giving effect to some extent to ardent desire for closer relations now happily existing both in Mother Country and Colonies.

Her Majesty's Government feel that for these reasons and others which have been fully explained to delegates they must press for amendment of Clause 74, but it is their earnest desire that such amendment may be carried out in the way most agreeable to Australian sentiment, and so as to avoid if possible the necessity of delay and expense involved in a further referendum.

Several suggestions have been made with this object, but delegates feel that lack of instructions precludes them from discussing the form which any amendment should take, or the method by which effect should be given to

it. It is also necessary that provision should be made for explaining that, as intended by the framers of the Constitution, the Colonial Laws Validity Act, 1865, will apply to Laws of a Commonwealth Parliament; there can be no difficulty in arranging suitable terms on this point.

I now earnestly appeal to your Government to co-operate with me in securing the unopposed passage of a Bill which, while accepting the Constitution proposed by the Colonies practically in its entirety, will also take account of the considerations urged above; and I trust that your Ministers may see fit to enlarge the instructions to their delegate, and to give him authority to arrange with Her Majesty's Government the speediest and most satisfactory method by which these objects can be ensured.

LIEUT.-GOVERNOR SIR JOHN MADDEN (VICTORIA) TO MR.
CHAMBERLAIN.

(Received 6.45 p.m., April 22, 1900.)

TELEGRAM.

In accordance with request made by Premiers in conference, Melbourne, transmit following telegram:—

The Premiers of New South Wales, Victoria, Queensland, South Australia, and Tasmania, in conference assembled, having given full consideration to the despatches from the Secretary of State for the Colonies respecting suggested amendments in the Commonwealth Bill, reply:—

(1.) While they fully recognise the feeling of the Imperial Government that vigilance on their part is essential in the interests of all parts of the Empire, and also the importance of securing the inclusion of Western Australia in the Federation from the first, they cannot forget that by the enabling Acts and in pursuance of them (a) the framing of the Federal Constitution was expressly entrusted to the Convention of Representatives, specially elected by the people for the purpose, in all the Colonies, except Queensland and Western Australia, and that the final acceptance or rejection of the Constitution when framed was also remitted to the people; (b) the question as to appeals was, *inter alia*, considered by the Convention in Adelaide, and no appeal to the Privy Council was allowed. During the visit of the Premiers to England at the Jubilee the matter was referred to by the Secretary of State for the Colonies, who urged reconsideration. It was accordingly reconsidered at the meeting of the Convention in Melbourne, and resolved in the opposite direction to the decision in Adelaide. Later, the matter was again discussed, and the compromise now in the Bill agreed to. It was yet again debated in the Premiers' Conference prior to the last referendum, and no alteration was made in the form of the Bill. The vote was then taken and the Bill was adopted by a large majority of the electors; (c) the Commonwealth Bill belongs therefore in a very special sense to the people of Australia, whose only mandate to Governments and Parliaments is to seek its enactment by the Imperial Parliament in the form in which it was adopted by the people.

(2.) The Premiers believe that the Appeal Clause, as framed, could not work injuriously to any part of the Empire, although the proposed new Court of Appeal for the Empire would doubtless present attractions to the people of Australia.

(3) The only alternatives suggested in the despatches are: (1) Amendment of the Bill and (2) postponement of its consideration. Of these two the Premiers do not hesitate to say that the latter course would be much more objectionable to Australians generally even than the former.

(4) Without disputing the constitutional power of the Imperial Parliament to amend the Bill on its own responsibility, the Premiers respectfully urge that the voice of the Australian people given on the Bill as it stands

should receive that favourable consideration which such a weighty referendum demands. The Premiers do not consider themselves as having authority to accept any amendments. They hope that the Colony of Western Australia, whose representatives assisted to frame the Bill, and in the Convention almost unanimously agreed to Clause 95, may be urged to accept it as it stands. They think that the Bill already sufficiently provides for the admission of New Zealand.

MEMORANDUM OF THE AUSTRALIAN DELEGATES (EXCEPT QUEENSLAND).

After the Conference held at the Colonial Office on the 5th April, 1900, the Right Honourable the Secretary of State invited the Premiers of the Australian Colonies which have forwarded the Commonwealth Bill to "co-operate" with him in securing an "amendment of Clause 74 in the way most agreeable to Australian sentiment," trusting that they would "see fit to enlarge the instructions to their Delegates" and give them "authority to arrange with Her Majesty's Government the speediest and most satisfactory method" of doing so. The one remaining amendment of the measure which Her Majesty's Government have suggested has been fully considered by the Premiers in conference. As they have been unable to accept it, or to agree to withdraw, enlarge, or modify the instructions under which the Delegates are acting, it continues to be the common duty of the Delegates, each of whom is appointed to represent all of the federating Colonies, to press for the speedy passage of the Bill as prepared by the instructions, and indorsed by the votes, of the Australian people. In firmly preferring this request with all possible respect, the subscribing Delegates feel it to be desirable to offer some comment upon the Memorandum of the Secretary of State of the 29th March, 1900, not from any desire to unduly prolong controversy, but simply to prevent possible misunderstanding.

It is unfortunately a necessity that their remarks should be mainly confined to the legal issues raised by the Crown Law Officers, and chiefly upon legal lines. But at the outset the Delegates desire to once more affirm their conviction that the real question involved is only incidentally one of a legal character. So far as they discuss matters of interpretation or construction of the Commonwealth Bill, it is merely for the purpose of showing that they may be safely set aside even from the standpoint of the constitutional lawyer. They may be, and indeed are, worthy of the best examination in detail, and this the Delegates have endeavoured to give them, satisfied as they are that at best they affect only what in the present case may be termed side issues. It is hoped that they will be read in this light, and not supposed to be fundamental because they are here again examined at some length. The substantial issue which it has been the first duty of the Delegates to submit, and which they again, with all deference, press upon the best attention of Her Majesty's Ministers, is that the Bill as prepared is the Australian Constitution in a double sense, since it is not only Australian by origin, but by the deliberate indorsement of Parliaments and peoples. Any alteration of it not both absolutely essential and incapable of achievement by any other means and at any other time is to be deprecated as destroying the character of the measure so prepared, and re-opening numerous issues at present happily and conclusively settled.

The very preamble of the Commonwealth Bill, in language adopted after full debate as the foundation of the whole structure, sets out that the people of the Colonies which have adopted the Constitution, "humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established." An

alteration such as is proposed would, therefore, at once vitiate the agreement to unite, and render this solemn declaration a violation of the facts.

It is to be gravely apprehended that if Clause 74 be amended the persistent opponents of Federation and of this Bill would be encouraged to renew their agitation. A fresh Referendum, whatever its result, must involve further expense, delay, and vexation. If a Referendum were not granted it would be correctly asserted that the Bill no longer contained the contract which the people had accepted. In either case, the initiation of the Commonwealth would be embittered, and its earliest problems confused by the introduction of issues fruitful of strife. The Delegates are still confident that Her Majesty's Government will not find it incumbent upon them to adopt a course involving such consequences.

The anxiety of Her Majesty's Government that the Bill should be speedily passed is acknowledged with gratification. That it is their bounden duty to protect other interests besides those of Australia, if any such are injured, is as readily recognised. It is believed that the Commonwealth Bill has been framed with every due regard to this consideration, and that the Representatives who prepared it have left nothing undone to secure in its provisions just protection to the interests of the Mother-country and of the rest of the Empire, as well as of Australia.

As it is no longer in contemplation to alter the measure except as to Clause 74, the effect of which would be nullified by amending Nos. 2 and 5 of the "covering clauses," the Delegates will confine their remarks as closely as possible to that part of the Bill. They are told that their previous Memorandum "abstains from discussing any of the suggested alterations on their merits." They venture respectfully to entertain a different opinion, and in support of it they point to the fact that the elaborate Memorandum of Her Majesty's Government is of a nature which would scarcely have been thought necessary had not the merits of the suggestion been shown to be, at the least, arguable.

The Delegates, however, admit that they have forborne to dilate on the disadvantages to Australia which result from present appeals to the Privy Council, for not only are the delay and expense of these appeals incapable of serious dispute, and the evils patent which are inseparable from the want of judicial knowledge of Australian laws and conditions, but the Court as at present constituted is not attempted to be defended. Whether its proposed reconstitution will suffice from the Australian point of view must depend on subsequent Imperial legislation. If that legislation suffices, it will then be possible to confer on the reconstituted Court jurisdiction with reference to Australian appeals. But Australia has, for many years, sought to secure a remedy for the existing conditions, and when at length, after infinite pains, she has formulated a scheme which satisfies Australian requirements, and which is ready for legislative enactment, it would manifestly be inequitable that its adoption should be postponed pending the consideration of some other remedial measure not yet prepared, and which may, or may not, be satisfactory.

Australia has not chosen this moment to present an alternative to the proposals of Her Majesty's Government, but the reconstitution of the Council is now presented as an alternative to the acceptance of the work on which Australia has been engaged for years, in the endeavour to cope with existing disabilities which must otherwise remain for an indefinite time until removed by means of which the details have not yet been submitted to Parliament. The Bench in Australia composed of Her Majesty's Judges is under no suspicion, and suffers from no stigma. When the proposal for the establishment of an Imperial Court of Appeal was submitted to the Premiers, they replied that such a Tribunal "would doubtless present attractions to the people of Australia." If, then, the measure creating such an Imperial Court be hereafter passed, containing a ready means by which its jurisdiction might be adopted by the Commonwealth in regard to issues involving the inter-

pretation of local Constitutions, there would be no difficulty in the way of a cordial acceptance of the new Court by the Federal Legislature. Assuredly, the creation of the new Court would not be delayed by the immediate passage of clause 74. The desired end would thus be happily attained by an unexceptionable procedure without the friction likely to be generated by the amendment of the Commonwealth Bill. The establishment of the Commonwealth necessitates the immediate constitution of a Court to which speedy recourse may be had for the determination of differences between the Commonwealth and the States as to their relative jurisdictions. The delay and inconvenience which would inevitably result if that Court were only to be found in England are surely too grave to be permitted.

The merits, however, are largely apart from the question whether the handiwork of the Australians in their Bill is open to improvement. In provisions which are not objected to they have provided the means for improvement by their own hands, when they think the day for it has come; but as the making of the measure is an act of self-government, so is the amending, and the question is whether this act of self-government can meritoriously be interfered with.

It is remarked that "the points of difference are few in number, and involve a minimum of alteration." There being now but one point of difference, is it not worthy of consideration whether friction and dissatisfaction should be created for the sake of so little, and whether the whole of the draft Bill should not be submitted to Parliament, and passed into law, in its present form, when it is as plain that the refusal would mean much to Australia as it is that the gracious concession of all cannot mean much to Her Majesty's Government or to Parliament.

It is not quite an accurate description of the Enabling Acts, under which the Referendum was taken, to say that they "formally referred to the 'Constitution' only." Both in the Enabling Act and the Addresses the Constitution means the whole Bill. Take, for instance, the New South Wales Enabling Act of 1895, under which her Representatives in the Convention were elected. While section 3 states that the first of the chief objects of the Act is to provide for the framing of a "Federal Constitution for Australasia," clause 7 imposes on the Convention the duty of framing a Federal Constitution "in the form of a Bill for enactment by the Imperial Parliament," and, having thus stated what it means by a Federal Constitution, the Act, whenever it afterwards refers to the Constitution, must be taken to refer to the Bill for enactment by the Imperial Parliament. Further, the Act provides for the adoption by the several Colonial Parliaments of Addresses to the Queen, praying "that the Constitution may be passed into law by the Imperial Parliament." The "Constitution," therefore, which was to be the subject of the Addresses, plainly meant the whole of the Bill for enactment by the Imperial Parliament referred to in clause 7.

Again, in the Act of 1899 making "provision for the acceptance and enactment of a Federal Constitution for Australia," the Preamble recites the preparation by the elected Convention of a draft Bill intitled "Draft of a Bill to constitute the Commonwealth of Australia," and that the said draft Bill "was duly submitted to the vote" at the first Referendum; and in the whole of this enactment the "draft Bill" is the measure which is to be put to the vote, and the term "Constitution" is defined as "the draft of a Federal Constitution set out in the 3rd Schedule," turning to which we find it to contain the draft Bill, "covering clauses" and all. It was this Draft Bill which was submitted to the final vote, and that is why the whole of it is sent forward with the Parliamentary Addresses as "the accompanying Constitution," the enactment of which is prayed.

The Convention, then, did not act *ultra vires* of the Enabling Acts in preparing and submitting the covering clauses. The same consideration was given to them as to the rest of the Bill. They are part of the Constitution as defined in those Acts, in compliance with which they were submitted to the people. The Enabling Acts were passed, within their legislative powers,

by the Parliaments of the several Colonies, and assented to by Her Majesty's Representatives, and no attempt has ever been made to disallow any of them.

It is quite true that there are ways in which the covering clauses could be altered without changing the meaning of the Schedule, but that is not the case with regard to the suggested alterations as to Privy Council Appeals, which is avowedly intended so to operate as to practically nullify clause 74. No Delegate and no Australian Minister has ever admitted, or even suggested, that it would be a preservation of the inter-colonial compact of the electors to make such an alteration as this.

There is no utterance of Mr. Barton's, nor is there any inference to be drawn from any words of his, which can point to any acquiescence on his part in anything amounting to an amendment of the Schedule headed "The Constitution." The very passage quoted on p. 2* of the Memorandum of Her Majesty's Government from a speech of his at the Sydney meeting of the Convention in 1897 is an expression of his confidence, that the provisions of "Constitution" itself would not be altered, and cannot be cited to show that he would acquiesce in amendments of it simply because they were made through the covering clauses. But the Delegates would remark that the question now under discussion should be considered in relation rather to the conclusions of the Convention and afterwards of the Premiers, as ratified by the electors, than to the expressions of individual representatives in debate.

It may here be made clear, if, indeed, it is not so already, that the Delegates do not put forward on the part of Australia any "claim to have a final voice in respect of matters which are not purely Australian." They believe, and with confidence, that there is no desire to prevent Australians, from managing their own affairs, so long as in so doing they make no attempt to manage the affairs of other countries. They do not presume to doubt that Her Majesty's Government, and the Parliament of the United Kingdom, being in a sense trustees for the whole of Her Majesty's dominions, regard it as their duty to see that no one part of the Empire exercises its self-governing powers in derogation of the rights of other parts of the Empire. On the other hand, if an extension of self-government is sought under circumstances which do not injuriously affect other parts of Her Majesty's dominions, the Australian people believe themselves to be entitled to such an extension. This is merely an assertion of the ordinary rights of British citizenship among Her Majesty's free white subjects.

The substantial questions then are—

1. Whether clause 74 derogates from the rights of other parts of the Empire? and
2. Even if it appears technically to do so, whether the clause would in its operation injuriously affect other parts of Her Majesty's dominions?

The Delegates confess their inability to see that an affirmative answer can be given to either of these questions.

As to the first question, the clause expressly reserves the rights, or, to use its own words, the "public interests" of every part of Her Majesty's dominions outside the limits of the Federation. It is said that "public interests" need legal definition. If the expression has no technical meaning it must be construed in its ordinary and common-sense signification, and there ought to be no difficulty on the part of the average citizen in understanding the meaning of a term which he reads every day in his newspaper, and frequently employs in his speech. Where the question at issue concerns the legislative powers given by the Constitution to the Federal Parliament, or those conserved to a State, the "public interests" of another part of the Empire will be involved where it becomes necessary to define the extent to which, if at all, the exercise of such powers has impinged on those exercised by the Crown, or by the Imperial Parliament, or by the Legislature of any other part of the Queen's dominions. It is evident that this consideration meets most of the difficulties suggested in the Memorandum of the Government, inasmuch as in this class of cases the path of appeal to Her Majesty in Council cannot be barred by the clause. If, for instance, questions arise "whether

legislation under any of the powers mentioned in paragraphs 1, 9, 10, 19, 20, 26, 27, 28, 29, 30, 37, and 38 of Article 51 of the Constitution is or is not *ultra vires*," and the legislation involves matters "affecting foreigners and foreign ships in Australia and in Australian waters, and their Treaty rights," clause 74 will not take away the right of appeal, for the public interests of Her Majesty's dominions outside Australia would be involved. Any other conclusion would need for its support the somewhat embarrassing contention that in such instances there is no conflict of public interests.

If the interests of investors in Australian securities, or of shareholders in "industrial undertakings formed in the United Kingdom to carry on some great commercial enterprise in Australia," are touched as the result of Federal legislation, they can be equally touched now under those Constitutions which give the several Colonies the right to legislate for the peace, order and good government of those Colonies "*in all cases whatsoever*." These are powers in the every-day possession of each of the Colonies composing the Australian Federation: powers which are not grudged to them singly, but which are supposed to be dangerous in the hands of the Commonwealth they are about to form, and especially dangerous when the legal mind expresses itself judicially in Australia instead of at Westminster. Is this the time for such mistrust?

But assuming that the interests of these classes of subjects are not "public interests" of the parts of the Empire in which the subjects live, how can it be said that Imperial interests are affected by the subjection of enterprises in Australia to Australian laws, for the mere reason that these laws are to be interpreted by Her Majesty's Judges in Australia. British investors are content to lay out their money in other parts of the world under alien laws, interpreted by alien tribunals. Australians will be prone to doubt that such investors can be seriously alarmed at the prospect of having afforded to their investments in Australia the security of British laws administered by British Judges, a security which will never be questioned. The Memorandum refers to the high standing and ability of Australian Judges, although the basis of the Memorandum appears to imply a want of confidence in their trustworthiness. The capacity and impartiality of Judges drawn from Australia have lately been recognised by making them eligible to seats on the Judicial Committee of the Privy Council. Surely their possession of these qualities is not doubted because they sit in Australia, and admitted only when they are associated in their labours with Imperial Judges? Or can it be supposed that they are unable to discharge their duties adequately or without bias except on the opposite side of the world to that in which the cause of action arose? Our Judges are now appointed to hear the very class of causes in which it is suggested that they would prove unreliable if they heard them in Australia.

The Delegates fail to understand how the interpretation given to the Federal Constitution, or to the Constitution of an Australian State, is likely to derogate from the rights, or to injure the public interests of, for example, Hong Kong or Vancouver. The principles of statutory interpretation are the same throughout the Empire, and when those principles are applied in Australia to extract the meaning of a clause or a phrase, the process is scarcely likely to diminish the security of life, liberty, or property, elsewhere. If a controversy is finally decided by the High Court of Australia the decision will, of course, be a guide, *but in Australia only*, to the settlement of subsequent controversies in similar cases; but that is to-day the fact with respect to the decisions of the Superior Courts, in all parts of the Empire, when not appealed from; and however closely those decisions may be followed in the Courts which give them, it will scarcely be contended that they injuriously affect the rights of litigants in other parts of the Empire, or shake the principles upon which those rights are upheld.

It is, however, generally contended, in opposition to clause 74, that its operation would "tend to destroy uniformity of decision on constitutional questions," and would in this way raise confusion and uncertainty, which

would be against the interests of the rest of the Empire. The principles of the interpretation of Statutes are so well understood that any lack of uniformity in that regard is out of the question. But in their application to the words of an Australian Constitution, the occasion for uniformity of the decisions with those given on the meaning of other Constitutions does not even arise. The decisions of the particular Court would be consistent, one with another, whether pronounced by the High Court or by the Privy Council; since the same Court does not usually give inconsistent judgments: but the questions which may be raised as to the construction of the Constitution must themselves differ so completely from questions affecting Constitutions of different design, that uniformity of decision is in this respect as unattainable as it is undesirable. The Constitution of Canada is entirely different from the Commonwealth Bill in many points, but especially as regards the reservation of residuary powers affected by the enumeration in Clause 5, and by the express reservations of clauses 106, 107, and 108. Uniformity of decisions in questions such as these would be an attempt to bring two differing Constitutions into line, with the result of confusion and disaster.

Judicial knowledge of local conditions is an essential to true interpretation, which, nevertheless, differs with the conditions; and where the structural methods of two Constitutions are as widely apart as the countries to which they apply, and where also the local conditions are as far asunder as the methods or the countries, to strain after uniformity of decision is to grasp at peril with both hands. If uniformity of legislation in widely separate parts of the Empire is unattainable, as it will be so long as men of British race are free, it cannot be said to be so important as to be essential to Imperial interests that there should be uniformity in the interpretation of dissimilar Constitutions. Moreover, sensible business people do not resort to lawyers at a distance from a country to find out what the law of that country is. If a merchant in London wants to know the Australian law affecting his interests he seeks the advice of competent counsel in Australia; he does not prefer the opinion on such questions of even the most eminent of English lawyers. Why is this? Clearly because his common sense tells him that an intimate knowledge of local laws and conditions is of the highest importance in the formation of a sound opinion. Suppose, then, that the leading counsel in Australia and the eminent jurist in England are both promoted to the Bench, will it follow that the promoted Englishman will understand the local law as well as his promoted brother in Australia, to whom a superior knowledge of that law was accorded in practice before his promotion?

Her Majesty's Judges in Her Australian Courts may be as fairly trusted to abstain from infringing the rights of Her subjects residing elsewhere as any Judges in any other of Her Courts. Justice is administered in the name of the Queen. The Courts, wherever situated, are constitutionally Hers, and the Judges are constitutionally Her selection, nor has it been found difficult to give Australian Judges the status of Privy Councillors. Her Advisers in Australia are, and will be, as responsible for wrong guidance as are Ministers in this Kingdom, and Australians are not so un-British as to admit that 4,000,000 of them cannot properly conduct their own affairs, or properly choose Judges who can say, better than any authority elsewhere, what those Australians mean in their Constitutions. It may, of course, be said that the Commonwealth Bill will be an Imperial Act. Nevertheless, it is an instrument of Government framed by chosen Australians and ratified by those who chose them. If the Australians had not made it the occasion for this discussion would never have arisen.

In discussing the first of the questions which they take to be involved, the Delegates have found it impossible to avoid touching the second; but probably it will be apposite to the second question to remark briefly on the contention, that to reserve to Her Majesty's Judges in Australia the final decision of a few Australian questions will shatter, or at least weaken, a "link of Empire." The Delegates reflect with pride that there are senti-

ments which will constitute eternal "links of Empire," but are quite unable to understand how there can ever be the least hope that we can merely, "by insuring uniform interpretation of the law throughout the Empire, facilitate that unity of action for the common interests which will lead to a real Federation of the Empire." The "unity of action" and the "uniform interpretation of the law" seem to them wholly unrelated, and certain to remain so. The consciousness of kinship, the consciousness of a common blood, and a common sense of duty, the pride of their race and history, these are the links of Empire, bands which attach, not bonds which chafe. When the Australian fights for the Empire, he is inspired by these sentiments, but no patriotism was ever inspired or sustained by any thought of the Privy Council.

The Delegates fail to see how its monopoly of the right of final interpretation can tend to make the Australian feel that it binds his affections more closely to the mother of his race. The tie of affection will last as long as its causes. May that be for ever. The tie which is not rooted in affection is no boon, it is an injury, and yet we are told it is to be maintained lest Her Majesty's Judges in Australia should give interpretations to the British Laws and Constitution of that land which will usurp the powers, or endanger the interests, of their fellow-subjects elsewhere. Even now Australian Legislatures have the power to make declaratory laws, and cases have arisen in which they have declared by Act of Parliament the meaning of their laws to be the reverse of that which the Judicial Committee has attributed to them. Will it be said that this legislative power thus exercised by Australians, to interpret finally their own laws, is a danger to British interests or a destroyer of any link of Empire? Unless the power is so chargeable its existence and exercise seem quite inconsistent with the position set up by the Memorandum of the Government. Why should not Australians have the alternative of interpreting their meaning on the Bench as in the Senate? Are their Judges less trustworthy than their legislators?

The Delegates are not unaware that representations, which they have not had the advantage of seeing or hearing, have on this subject been addressed to Her Majesty's Government. If they have come from private citizens they have generally emanated from members of the minority who have opposed the Bill. If they have come from men of high official position, they are as destitute of authority as in all cases ought to be the pronouncements of officials in derogation of the action of Government when backed by Parliament and people. Contrast with these criticisms the explicit language of the Right Honourable G. H. Reid, speaking as Premier of New South Wales in August last: "There will be no safety or security for Australian union until it is known that the Bill that Australia has drafted for the Imperial Parliament to pass word for word is passed by that august Tribunal word for word." Without citing the numerous expressions of similar opinions from leading public men of all parties in Australia, the subscribing Delegates may be forgiven if they refer to their own qualifications for interpreting the views of the Australian people. Four of them were elected members of the Convention which framed the Bill, at a time when the Colony of Queensland was not represented in the Councils of Federation. One of them was the elected President of the Convention, another of them was elected to that Convention by the largest number of votes ever polled for any candidate in Australia, and he was subsequently made the leader of the Convention by the voices of all the Colonies. Mentioning these facts, merely to show that they speak from personal knowledge, the Delegates assure Her Majesty's Government that the proposed alteration of the Constitution, even through a covering clause, cannot fail to be distasteful and harassing to the Australian people. If they accepted the Constitution with such an amendment, it would be because they were made to choose between the bowl of intervention and the dagger of delay.

In conclusion, the Delegates submit that the object of all those who seek "to draw closer together all parts of the Empire" will be best served in Australia by never permitting its Federation to be placed, under any circum-

stances, in even apparent opposition to "the larger question of Imperial Federation." So far from there being any necessary conflict between the two movements, it has always been maintained in the Colonies that local union is an essential preliminary to any practical scheme of Imperial co-operation. The suggestion that they are antagonistic is therefore to be deprecated, as it is not only unjustified, but must deal a serious blow to the prospects of Imperial Federation all over Australia.

The Delegates therefore plead most earnestly with Her Majesty's Government that effect may be given to the representations made by the Australian Premiers in their recent telegram. That despatch makes it clear that the clause as it stands was repeatedly considered and ratified by Convention, Premiers, and people; that the electoral adoption of the Bill is a mandate to Executives and Legislatures to seek its enactment in the form which the people gave it by their representatives, and confirmed by their votes; that the Premiers decline to accept alterations, because that course is unauthorised in view of the mandate, and would therefore be improper; and that they decline to authorise others to do on their behalf that which they cannot rightly do themselves. This request implies no questioning of the trusteeship of Her Majesty's Government, of the wisdom of Parliament, or of its sovereign power; but often it has been the truest wisdom of sovereignty to abstain from the exercise of its power, or so to exercise it only as to win the gratitude of those who are subject to its authority.

EDMUND BARTON.
ALFRED DEAKIN.
C. C. KINGSTON.
P. O. FYSH.*

April 27th, 1900.

MEMORANDUM IN REPLY TO MEMORANDUM OF DELEGATES
OF 27TH APRIL.

Her Majesty's Government feel that no useful purpose will be served by a detailed discussion of all the arguments contained in the Memorandum of the 27th April, signed by four of the Australian Delegates, as most of them have been met by anticipation in the Memorandum of the 29th March. Nothing would be gained by the repetition of arguments which have already been sufficiently developed, and Her Majesty's Government feel that the time has come when further written discussion of the position adopted by the Delegates with reference to the amendments suggested by Her Majesty's Government is unnecessary. There are, however, one or two points which deserve a brief comment, even at the risk of some repetition.

It cannot fairly be contended that the approval given by the people of the Australian Colonies in favour of the proposals for Federation submitted to them is to be taken as an unqualified and considered ratification of every detail of the Constitution, and that no single provision of the measure can be altered without contravening the deliberate decision of the majority of the electors of Australia on that point.

The only other point to which Her Majesty's Government think it necessary at this stage to allude has reference to the statements made in the seventh paragraph of the Memorandum of the 27th April respecting the alleged disadvantages which at present attend appeals to the Privy Council.

Her Majesty's Government believe that these appeals are not attended with such delay and expense as are suggested, and they are not aware of any justification of the statement that there are patent evils arising from the want of knowledge of Australian Laws and conditions.

It has never been admitted, nor can it be justly asserted, that the Court of the Privy Council as at present constituted is incapable of defence. Her Majesty's Government refer to the statement in their Memorandum of the 29th

* Mr. Dickson did not sign this paper for reasons stated in his letter on p. 166.

March, that the administration of justice by the Privy Council has been, on the whole, such as to command the confidence of the Empire. This statement is amply justified by the history of that Tribunal, and no inference to the contrary can properly be drawn from any proposals for still further improving its constitution.

The excellent work which has been done by the Judicial Committee in deciding the extremely difficult and delicate questions which arose between the Dominion and the Provinces of Canada is of itself a complete refutation of the idea that the Tribunal as at present constituted needs any defence.

The amendments which have been proposed by Her Majesty's Government are based upon no mistrust of the people of Australia; the sole desire of Her Majesty's Government is that, in a matter which affects not only the welfare of Australia, but the interests of the whole Empire, the Bill should be passed in a form which will be best alike for Australia and for every other part of Her Majesty's dominions. In the attempt to attain this result Her Majesty's Government confidently hope that they will have the co-operation and the support of the Australian people.

4th May, 1900.

MR. J. R. DICKSON (QUEENSLAND) to COLONIAL OFFICE.

(Received May 7, 1900.)

SIR,

52, Stanhope Gardens, S.W., May 5, 1900.

I LEARN that a second Memorandum from the Australian Delegates, urging that no amendment of the Privy Council Appeal be made in the Commonwealth Bill by Her Majesty's Government has been forwarded for your consideration.

As this document does not bear my signature (being one of the Delegates), it appears to me proper that you should know my reasons for declining to sign.

They are two in number, viz., An earnest wish to see the Bill passed by the Imperial Parliament without delay, which I know is the paramount desire of Australia, and secondly, a conviction that the maintenance of plenary appeal to the Privy Council, notwithstanding the provisions of the Bill, is regarded with most cordial approval by every loyal subject—certainly in Queensland—and, I believe, generally throughout Australia.

My colleagues well know that whenever we have touched on this subject, I have not seen eye to eye with them; but when we first addressed you I allowed my individual views to give way to a sense of loyal *camaraderie* and to show unanimity in council. Also, having been instructed by the Premiers at their January Conference to get the Bill passed without amendment, I signed the first Memorandum, presented as the exposition of the views of the Australian Delegates, notwithstanding I felt that the retention of full appeal in our Federal Constitution was the desire of the Government and people of Queensland.

Since arriving in London, we have had the honour and immense advantage of consultations with the Attorney-General, Sir Richard Webster, and Sir Robert Finlay, Solicitor-General, who, at interviews and in the written reply to our Memorandum, with which you have favoured us, have expressed arguments in maintenance of full appeal which appear to me to be practically unanswerable.

You are aware that after our Memorandum and your reply thereto had been mutually considered, it was deemed advisable to place the position before the Premiers of Australia, with a view to enlarge our commissions and to accept amendments. Their reply is, to my mind, clear. They hesitate to accept the responsibility of enlarging our commissions lest they should show themselves "infirm of purpose" in still conducting the progress of Federation; for, be it remembered, the Premiers who now administer the affairs of

Australia are not in all cases the men who successfully carried the Commonwealth Bill through stormy Parliaments and fiercely passionate Referenda. Public gratitude has been expressed by political ostracism. Nevertheless, I read their reply as assenting to enlargement of appeal, with an earnest request for no unnecessary delay to occur in passing the Bill.

Their reply to you states:—

“(3.) The only alternatives suggested in the despatches (from the Secretary of State for the Colonies) are: (1) Amendment of the Bill, and (2) postponement of its consideration. Of these two the Premiers do not hesitate to say that the latter course would be much more objectionable to Australians generally even than the former.”

Can any intelligent reader doubt the construction to be attached to this passage? The undoubted meaning is that, above all things, delay in passing the Bill is to be deprecated, and, although they will not undertake the responsibility of accepting amendments, they desire the Bill passed *now*, even with amendments.

Having, then, their answer to your communication, I am of opinion our clear duty is to accept the Bill with the Privy Council Appeal maintained in the form you have expressed to us, and so ably argued and explained by the two eminent legal authorities to whom I have previously referred.

I think in presenting a contentious and highly argumentative communication to you now—a document which if fully weighed appears to invite deliberate consideration and reply—those who do so are really imperilling the early presentation of the Bill to Parliament, and may tend to frustrate an immediate and successful issue to our most important mission.

In illustration of this, I would refer to the paragraphs in this second Memorandum, which assert, “The substantial questions then are: (1) Whether Clause 74 derogates from the rights of other parts of the Empire; and (2) Even if it appears technically to do so, whether the clause would in its operation injuriously affect other portions of Her Majesty’s Dominions. The Delegates confess their inability to see that an affirmative answer can be given to either of these questions.”

My difficulty is to see how any other than an affirmative reply can be given to either of these questions.

My colleagues also refer to this question as being “so little” a concession. I consider it to be of immense and far-reaching importance. But, if “so little,” why dissent from the superior counsels of Her Majesty’s Government and delay the Bill in a matter of trivial importance?

It is not, however, my intention or desire to proceed with criticism of this document. My colleagues (Delegates) three of whom are justly recognized as most eminent in their learned profession, appear to me to view this question of appeal in a purely legal aspect, and naturally, as the authors of the Bill, to have a parental partiality for their own offspring.

My experiences of life and public office induce me to regard it from the standpoints of public policy, as well as of commerce and finance. And in these several positions I hold that maintenance of full appeal to the Privy Council is indispensable to the unity of the Empire and to a feeling of confidence and protection, which—even if it be a sentiment purely—encourages commercial and financial relations and expansion. Surely we should not allow ourselves to be blinded to the immense advantages of assisting the development of fuller trade relations within this great Empire. Hence it is in the true interests of Australia, as well as of Britain, to maintain all present connections, and if so now, how much more so may it be hereafter, when the phenomenal exigencies and patriotic impulses of the present day which bind us so closely together have disappeared.

But even as a legal question, I find diametrically opposite views to those held by my learned colleagues entertained by the most eminent jurists of Australia. Sir Julian Salomons, Sir Samuel Griffith—and surely no one will allege that he is “a member of the minority who have opposed the Bill,” or that, being

in "high official position," his views should be treated as "destitute of authority"—Sir Samuel Way, and, indeed, all the Chief Justices of Australia, are unanimous in advising that full appeal to the Privy Council be maintained in the new Constitution. Therefore, slightly altering the message conveyed to me from Brisbane yesterday, and published in this day's "Times," I may assert without fear of contradiction that my learned colleague Delegates do not represent a majority even of the legal feeling in Australia on this question.

While I have the full authority of the Government of Queensland for concurrence in the proposed amendments, I shall not further engage your attention, on which I fear I have unduly trespassed in this lengthy communication, except to add that, for the foregoing reasons, which can be considerably amplified, I have declined appending my signature, and also to say that I am constantly in receipt of letters and cablegrams from Australia, which justify me in asserting emphatically that the prevailing desire of Australia at present is to strengthen the ties which bind her to the Motherland.

At no time in Colonial history has a more enthusiastic desire to be bound up in the unity of the great British Empire been felt or expressed than that which now permeates Australia.

That desire is the yearning of a great British people to be considered not as "Colonials," but as British citizens, loyal to Queen and Empire, and possessing with their fellow subjects equal rights and privileges, together with similar aims and ambitions.

The people of Australia have given proof of this desire by something more practical and tangible than words alone. To you, Sir, and Her Majesty's Government Australia owes the development and present vigorous existence of this mighty feeling, and I conclude by respectfully representing that upon your decision will greatly depend the full meaning of "United Empire" hereafter, and the continuance of these loyal sentiments in the breasts of generations of future Australians.

I have, etc..

JAMES R. DICKSON.

MEMORANDUM.

Whitehall Court, May 8, 1900.

The subscribing Australian Delegates agree that no useful purpose is likely to be served by further written discussion of the amendments proposed to be made in the Commonwealth Bill by Her Majesty's Government.

The alteration chiefly discussed between the Delegates and Her Majesty's Government relates to appeals to the Judicial Committee. This is in no sense "a detail of the Constitution," such as is referred to in the second paragraph of the memorandum of May 4th. It has been described from the first by Her Majesty's Government as vital, and has been so treated by the Delegates, who have always distinguished such a proposal from those of minor importance which have been associated with it.

As it was understood that the suggested amendment in regard to the Colonial Laws Validity Act had been abandoned, no reference was made to it in the second memorandum of the Delegates. Without receding from any opinion already expressed, they urge that such an Act ought not to apply to the important Legislatures of such great self-governing communities as the Dominion and the Commonwealth, whose statutory authority should be subordinate only to that of the Imperial Parliament when exercised after the establishment of these Constitutions and expressly applied.

The Delegates trust that even now Her Majesty's Government may be willing, as they are able, to provide by separate legislation for this and any other matter which they consider essential, passing the Commonwealth Bill without amendments as desired by the Peoples, Parliaments, and Govern-

ments of the Colonies which they have the honour to represent. For the consequences which may ensue immediately and ultimately if the suggested amendments be made they cannot be held responsible. If they have been outspoken and tenacious of their views, the sincerity of their apprehensions will, no doubt, be accepted as sufficient justification.

They again express their thanks to Her Majesty's Government for the courtesy with which their representations have been received.

We have, &c.,

EDMUND BARTON.
ALFRED DEAKIN.
C. C. KINGSTON.
P. O. FYSH.

Correspondence as to the inclusion of Western Australia as an Original State, and Addresses to the Queen from the Legislature.

MR. CHAMBERLAIN TO ACTING-GOVERNOR SIR A. C. ONSLOW
(WESTERN AUSTRALIA).

(Sent 4.5 p.m., April 27, 1900.)

TELEGRAM.

Referring to my telegram of 5th April, as you are probably aware, Premiers of Federating Colonies have declared that they have no authority to accept amendments in Bill, and they have not given the delegates any instructions in regard to any suggestion. I cannot in these circumstances press the matter further, and I would now urge your Ministers earnestly to consider whether they should not, in the best interests of the Colony, as well as of Australia, make a resolute effort to bring the Colony into Federation at once.

Western Australia, unless it joins as original State, can only enter later on condition of complete intercolonial free trade. It will thus lose the temporary protection offered by Clause 95, and, looking to present population of Colony, it may also be found difficult to secure such large representation as it would receive as original State, and which will enable Colony to secure adequate protection for all its interests in Federal Parliament.

Your Ministers will also, of course, take into consideration effect of agitation of the Federalist party, especially in goldfields, if Western Australia does not enter as original State.

In these circumstances it appears to me of utmost importance to future of Western Australia that it should join at once, and as your Ministers have done their best to secure modifications desired by Parliament, I would urge them to take early steps for summoning new Parliament and laying position fully before it with a view to the action necessary for ascertaining wishes of people as to entering Federation.

If they agree to this course a clause will be inserted in Bill providing that if people have intimated desire to be included before issue of Her Majesty's Proclamation, Western Australia may join as original State.

ACTING GOVERNOR SIR A. C. ONSLOW (WESTERN AUSTRALIA) TO MR. CHAMBERLAIN.

(Received 8.30 p.m., May 2, 1900.)

TELEGRAM.

I am desired by Ministers to thank you for your great efforts to obtain one amendment required in the Bill on behalf Western Australia, and regret you have been unable to secure the desired alteration. Parliament has been

summoned, on your suggestion, for the 17th May, when an enabling Bill will be introduced by Premier providing for the immediate submission of the Federation Bill to the people.

Ministers gratefully accept your offer to make provision in the Imperial Act for Western Australia to enter as an original State should the wishes of the people be expressed in favour of Federation before the Queen's Proclamation is issued.

ACTING GOVERNOR SIR A. C. ONSLOW (WESTERN AUSTRALIA) TO
MR. CHAMBERLAIN.

(Received Colonial Office, 11.10 a.m., 1st August, 1900.)

TELEGRAM.

"Referendum resulted in adoption of Commonwealth Bill by large majority. Meeting of Parliament 15th August, when addresses to Her Majesty The Queen will be at once passed. Federation of Australia is now wholly complete, and am desired by Sir John Forrest to congratulate you and Her Majesty's Government on the satisfactory result of your efforts."

WESTERN AUSTRALIA.
LEGISLATIVE COUNCIL.

To the Queen's Most Excellent Majesty.

MAY IT PLEASE YOUR MAJESTY,—

WE, Your Majesty's dutiful and loyal subjects, members of the Legislative Council of Western Australia, in Parliament assembled, approach Your Majesty with assurances of our loyalty and sincere attachment to Your Majesty's Throne and Person.

WE humbly inform Your Majesty that the people of Western Australia have agreed to be united into a Federal Commonwealth together with the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, in accordance with the Act of the Imperial Parliament in that behalf, and we humbly pray Your Majesty to declare by Proclamation that on and after the day therein appointed Western Australia may be admitted as an Original State of the Commonwealth.

(Signed) GEO. SHENTON, President.

(Signed) C. LEE STEERE, Clerk.

21st August, 1900.

WESTERN AUSTRALIA
LEGISLATIVE ASSEMBLY.

To the Queen's Most Excellent Majesty.

MAY IT PLEASE YOUR MAJESTY,—

WE, Your Majesty's dutiful and loyal subjects, members of the Legislative Assembly of Western Australia, in Parliament assembled, approach Your Majesty with assurances of our loyalty and sincere attachment to Your Majesty's Throne and Person.

WE humbly inform Your Majesty that the people of Western Australia have agreed to be united into a Federal Commonwealth together with the

people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, in accordance with the Act of the Imperial Parliament in that behalf, and we humbly pray Your Majesty to declare by Proclamation that on and after the day therein appointed Western Australia may be admitted as an Original State of the Commonwealth.

(Signed) JAS. J. LEE STEERE, Speaker.

(Signed) WALTER A. GALE, Clerk.

21st August, 1900.

**ORDER OF HER MAJESTY IN COUNCIL APPROVING DRAFT
PROCLAMATION.**

AT THE COURT OF BALMORAL,

The 17th day of September, 1900.

PRESENT,

**THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL.**

The following Draft Proclamation was this day read at
the Board and approved :

A. W. FITZROY.

BY THE QUEEN.

A PROCLAMATION.

WHEREAS by an Act of Parliament passed in the Sixty-third and Sixty-fourth years of Our Reign intituled, "An Act to constitute the Commonwealth of Australia," it is enacted that it shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia.

And whereas We are satisfied that the people of Western Australia have agreed thereto accordingly.

We therefore, by and with the advice of our Privy Council, have thought fit to issue this Our Royal Proclamation, and We do hereby declare that on and after the first day of January One thousand nine hundred and one the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia.

Given at Our Court at Balmoral, this seventeenth day of September, in the year of our Lord one thousand nine hundred and in the Sixty-fourth year of Our Reign.

GOD SAVE THE QUEEN.

**CHAPTER 12.****An Act to constitute the Commonwealth of Australia.**

A.D. 1900.

[9th July 1900.]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established :

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Commonwealth of Australia Constitution Act. Short title.

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom. Act to extend to the Queen's successors.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that Proclamation of Commonwealth.

A.D. 1900. — the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

Commence-
ment of Act.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Operation of
the constitu-
tion and
laws.

5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Definitions.

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called "a State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

Repeal of
Federal
Council Act.
48 & 49 Vict.
c. 60.

7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

A.D. 1900.
Application
of Colonial
Boundaries
Act.
58 & 59 Vict.
c. 34.
Constitution.

9. The Constitution of the Commonwealth shall be as follows :—

THE CONSTITUTION.

This Constitution is divided as follows :—

- Chapter I.—The Parliament :
 - Part I.—General :
 - Part II.—The Senate :
 - Part III.—The House of Representatives :
 - Part IV.—Both Houses of the Parliament :
 - Part V.—Powers of the Parliament :
- Chapter II.—The Executive Government :
- Chapter III.—The Judicature :
- Chapter IV.—Finance and Trade :
- Chapter V.—The States :
- Chapter VI.—New States :
- Chapter VII.—Miscellaneous :
- Chapter VIII.—Alteration of the Constitution.
- The Schedule.

CHAPTER I.

THE PARLIAMENT.

PART I.—GENERAL.

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is herein-after called "The Parliament," or "The Parliament of the Commonwealth."

Chap. I.
The Parliament.
Part I.
General.

Legislative
power.

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

Governor-
General.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

Salary of
Governor-
General.

The salary of a Governor-General shall not be altered during his continuance in office.

A.D. 1900.

Provisions
relating to
Governor-
General.

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

Sessions of
Parliament.Prorogation and
dissolution.

5. The Governor-General may appoint such time for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

Summoning
Parliament.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First session.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

Yearly session
of Parliament.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

Part II.
The Senate.

PART II.—THE SENATE.

The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

Qualification
of electors.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

Method of
election of
senators.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

Times and
places.

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.

Application of
State laws.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections

for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State. A.D. 1900.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate. Failure to choose senators.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution. Issue of writs.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable: and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service. Rotation of senators.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation. Further provision for rotation.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as herein-after provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens. Casual vacancies

At the next general election of members of the House of Representatives, or at the next election of senators, for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives. Qualifications of senator.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as Election of President.

A. D. 1900. — the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of President.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation of senator.

19. A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy to be notified.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Quorum.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Voting in Senate.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III.
House of Representatives.

PART III.—THE HOUSE OF REPRESENTATIVES.

Constitution of House of Representatives.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

- (i.) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:
- (ii.) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

Provision as to races disqualified from voting.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the

number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted. A.D. 1900.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows: Representatives
in first Parlia-
ment.

New South Wales	-	-	-	-	-	twenty-three;
Victoria	-	-	-	-	-	twenty;
Queensland	-	-	-	-	-	eight;
South Australia	-	-	-	-	-	six;
Tasmania	-	-	-	-	-	five;

Provided that if Western Australia is an Original State, the numbers shall be as follows:—

New South Wales	-	-	-	-	-	twenty-six;
Victoria	-	-	-	-	-	twenty-three;
Queensland	-	-	-	-	-	nine;
South Australia	-	-	-	-	-	seven;
Western Australia	-	-	-	-	-	five;
Tasmania	-	-	-	-	-	five.

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives. Alteration of
number of
members.

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General. Duration of
House of Re-
presentatives.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States. Electoral
divisions.

In the absence of other provision, each State shall be one electorate.

30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once. Qualifica-
tion
of electors.

31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives. Application of
State laws.

32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives. Writs for
general
election.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Writs for
vacancies.

A.D. 1900. Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

Qualifications of members.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows :

(i.) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth, as existing at the time when he is chosen :

(ii.) He must be a subject of the Queen, either natural-born or for at least five years naturalised under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

Election of Speaker.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of Speaker.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

Resignation of member.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

Quorum.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Representatives.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

**Part IV.
Both Houses of the Parliament.**

PART IV.—BOTH HOUSES OF THE PARLIAMENT.

Right of electors of States.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Oath or affirmation of allegiance.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House. A.D. 1900.

44. Any person who—

- (i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power : or
- (ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer : or
- (iii.) Is an undischarged bankrupt or insolvent : or
- (iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth : or
- (v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons :

Member of
one House
ineligible for
other.
Disqualifica-
tion.

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv. does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

45. If a senator or member of the House of Representatives—

- (i.) Becomes subject to any of the disabilities mentioned in the last preceding section : or
- (ii.) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors : or
- (iii.) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State :

Vacancy on
happening
of disqualifica-
tion.

his place shall thereupon become vacant.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Penalty for
sitting when
disqualified.

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

Disputed
elections.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four

Allowance to
members.

A.D. 1900. — hundred pounds a year, to be reckoned from the day on which he takes his seat.

Privileges, &c.
of Houses.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Rules and
orders.

50. Each House of the Parliament may make rules and orders with respect to—

- (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld :
- (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

Part V.
Powers of the
Parliament.

PART V.—POWERS OF THE PARLIAMENT.

Legislative
powers of the
Parliament.

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to :—

- (i.) Trade and commerce with other countries, and among the States :
- (ii.) Taxation ; but so as not to discriminate between States or parts of States :
- (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth :
- (iv.) Borrowing money on the public credit of the Commonwealth :
- (v.) Postal, telegraphic, telephonic, and other like services :
- (vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth :
- (vii.) Lighthouses, lightships, beacons and buoys :
- (viii.) Astronomical and meteorological observations :
- (ix.) Quarantine :
- (x.) Fisheries in Australian waters beyond territorial limits :
- (xi.) Census and statistics :
- (xii.) Currency, coinage, and legal tender :
- (xiii.) Banking, other than State banking ; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money :
- (xiv.) Insurance, other than State insurance ; also State insurance extending beyond the limits of the State concerned :
- (xv.) Weights and measures :
- (xvi.) Bills of exchange and promissory notes :
- (xvii.) Bankruptcy and insolvency :
- (xviii.) Copyrights, patents of inventions and designs, and trade marks :
- (xix.) Naturalization and aliens :
- (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth :
- (xxi.) Marriage :

(xxii.) Divorce and matrimonial causes ; and in relation thereto, parental rights, and the custody and guardianship of infants : A.D. 1900.

(xxiii.) Invalid and old-age pensions :

(xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States :

(xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States :

(xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws :

(xxvii.) Immigration and emigration :

(xxviii.) The influx of criminals :

(xxix.) External affairs :

(xxx.) The relations of the Commonwealth with the islands of the Pacific :

(xxxi.) The acquisition of property on just terms from any State or person, for any purpose in respect of which the Parliament has power to make laws :

(xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth :

(xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State :

(xxxiv.) Railway construction and extension in any State, with the consent of that State :

(xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State :

(xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides :

(xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law :

(xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia :

(xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to— Exclusive powers of the Parliament.

(i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes :

(ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth :

(iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

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Powers of the
Houses in
respect of
legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Appropriation
Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Tax Bill.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation
of money
votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

Disagreement
between the
Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree,

the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives. A.D. 1900.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the Amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Royal assent
to Bills.

The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Recommendations
by Governor-General.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Disallowance
by the Queen.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

Signification
of Queen's
pleasure on
Bills reserved.

CHAPTER II.

THE EXECUTIVE GOVERNMENT.

Chap II.
The
Government.

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Executive
power.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Federal
Executive
Council.

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Provisions
referring to
Governor-
General.Ministers of
State.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit
in Parliament.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

Number of
Ministers.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Salaries of
Ministers.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Appointment
of civil servants.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council, or by a law of the Commonwealth to some other authority.

Command of
naval and
military forces.

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Transfer of
certain
departments.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth, the following departments of the public service in each State shall become transferred to the Commonwealth :—

Posts, telegraphs, and telephones :

Naval and military defence :

Lighthouses, lightships, beacons, and buoys :

Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

Certain powers
of Governors
to vest in
Governor-
General.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

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CHAPTER III.

THE JUDICATURE.

Chap. III.
The
Judicature.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

Judicial power
and Courts.

72. The Justices of the High Court and of the other courts created by the Parliament—

Judges'
appointment,
tenure, and
remuneration.

- (i.) Shall be appointed by the Governor-General in Council :
- (ii.) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity :
- (iii.) Shall receive such remuneration as the Parliament may fix ; but the remuneration shall not be diminished during their continuance in office.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

Appellate
jurisdiction of
High Court.

- (i.) Of any Justice or Justices exercising the original jurisdiction of the High Court :
 - (ii.) Of any other federal court, or court exercising federal jurisdiction ; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council :
 - (iii.) Of the Inter-State Commission, but as to questions of law only :
- and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

Appeal to
Queen in
Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

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Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Original
jurisdiction of
High Court.

75. In all matters—

- (i.) Arising under any treaty :
 - (ii.) Affecting consuls or other representatives of other countries :
 - (iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party :
 - (iv.) Between States, or between residents of different States, or between a State and a resident of another State :
 - (v.) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth :
- the High Court shall have original jurisdiction.

Additional
original jurisdic-
tion.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

- (i.) Arising under this Constitution, or involving its interpretation :
- (ii.) Arising under any laws made by the Parliament :
- (iii.) Of Admiralty and maritime jurisdiction :
- (iv.) Relating to the same subject-matter claimed under the laws of different States.

Power to define
jurisdiction.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

- (i.) Defining the jurisdiction of any federal court other than the High Court :
- (ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States :
- (iii.) Investing any court of a State with federal jurisdiction.

Proceedings
against Com-
monwealth or
State.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Number of
judges.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

Trial by jury.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

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CHAPTER IV.

FINANCE AND TRADE.

Chap. IV.
Finance and
Trade.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Consolidated
Revenue Fund.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Expenditure
charged
thereon.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

Money to be
appropriated
by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Transfer of
officers.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

85. When any department of the public service of a State is transferred to the Commonwealth—

Transfer of
property of
State.

- (i.) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in

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the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary :

- (ii.) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department ; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth :
- (iii.) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section ; if no agreement can be made as to the mode of compensation, it shall be determined under law to be made by the Parliament :
- (iv.) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

Uniform duties
of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Payment to
States before
uniform duties.

89. Until the imposition of uniform duties of customs—

- (i.) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.
- (ii.) The Commonwealth shall debit to each State—
 - (a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth ;
 - (b) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.
- (iii.) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

Exclusive
power over
cu toms,
excise, and
bounties.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or

agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

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91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Exceptions as to bounties.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Trade within the Commonwealth to be free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

Payment to States for five years after uniform tariffs.

- (i.) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passed into another State for consumption, shall be taken to have been collected not in the former but in the latter State :
- (ii.) Subject to the last sub-section, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

Distribution of surplus.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth ; and such duties shall be collected by the Commonwealth.

Customs duties of Western Australia.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the

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Financial assistance to States.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Audit

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

Trade and commerce includes navigation and State railways.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Commonwealth not to give preference.

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Nor abridge right to use water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State Commission.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by State.

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

Commissioners appointment, tenure, and remuneration

103. The members of the Inter-State Commission—

- (i.) Shall be appointed by the Governor-General in Council:
- (ii.) Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

- (iii.) Shall receive such remuneration as the Parliament may fix ; but such remuneration shall not be diminished during their continuance in office. A.D. 1900.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States. Saving of certain rates.

105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof ; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the Several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States. Taking over public debts of States.

CHAPTER V.

THE STATES.

Chap. V.
The States.

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State. Saving of Constitutions.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be. Saving of Power of State Parliaments.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State ; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State. Saving of State laws.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. Inconsistency of laws.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State. Provisions referring to Governor.

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States may
surrender
territory.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may levy
charges for
inspection laws.

112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Intoxicating
liquids.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

States may not
raise forces.
Taxation of
property of
Commonwealth
or State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to
coin money.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth
not to legislate
in respect of
religion.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Rights of
residents in
States.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Recognition of
laws, &c. of
States.

118. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public Acts and records, and the judicial proceedings of every State.

Protection of
States from
invasion and
violence.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

Custody of
offenders
against laws of
the Common-
wealth.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

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CHAPTER VI.

Chap. VI.
New States.

NEW STATES.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

New States may
be admitted or
established.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Government of
territories.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Alteration of
limits of States.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

Formation of
new States.

CHAPTER VII.

Chap. VII.
Miscellaneous.

MISCELLANEOUS.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Seat of
Government.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

126. The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies,

Power to Her
Majesty to
authorise
Governor
General to
appoint
deputies.

A.D. 1900.

subject to any limitations expressed or directions given by the Queen ; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

Aborigines not
to be counted
in reckoning
population.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

Chap. VIII.
Alteration
of Constitution

CHAPTER VIII.

ALTERATION OF THE CONSTITUTION.

Mode of
altering the
Constitution

128. This Constitution shall not be altered except in the following manner :—

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any Amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

A. D. 1900.

SCHEDULE.

OATH.

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.
So **HELP ME GOD!**

AFFIRMATION.

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

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